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THE MEDIEVAL CHURCH IN SCOTLAND

The Rhind Lectures for 1901

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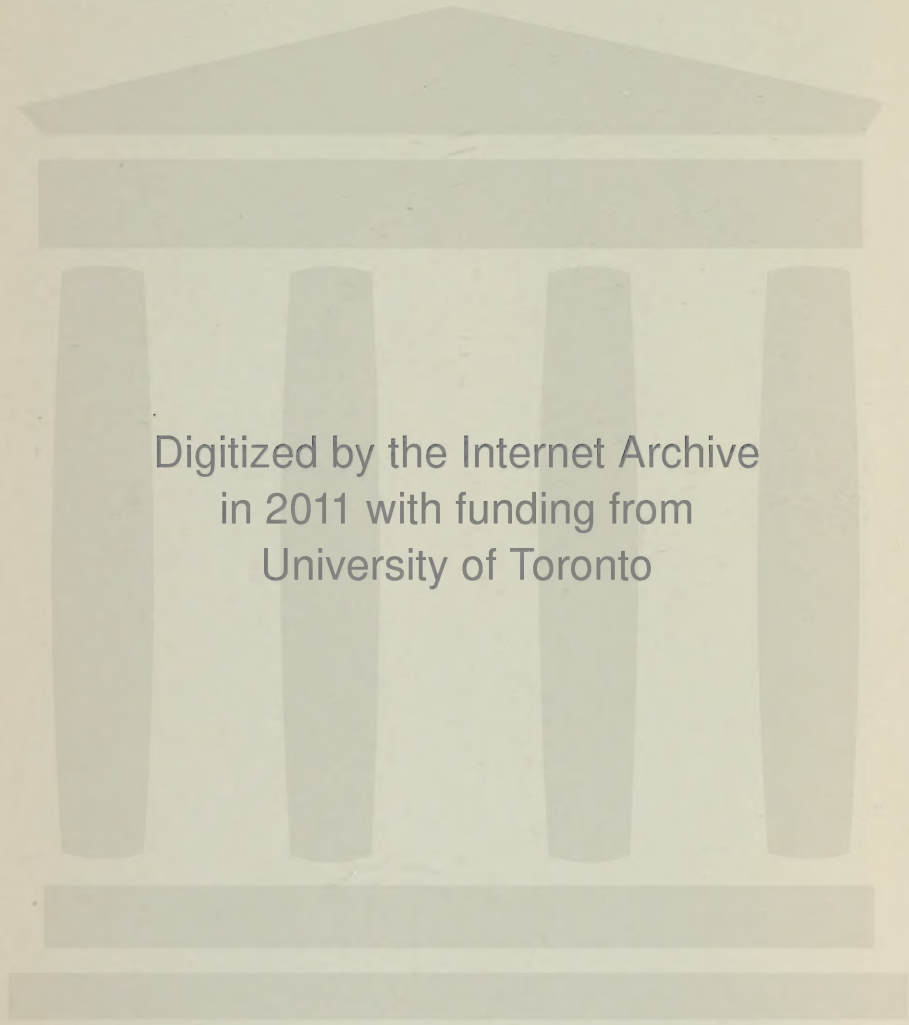
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BISHOP DOWDEN

1840-1910.

THE MEDIEVAL CHURCH IN SCOTLAND

ITS CONSTITUTION, ORGANISATION AND LAW

BY THE RIGHT REV.

JOHN DOWDEN, D.D., LL.D.

BISHOP OF EDINBURGH

VICE PRES. SOC. ANTIQ. SCOT.

WITH BIOGRAPHICAL SKETCH

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BIOGRAPHICAL SKETCH

My father was born on the 29th of June, 1840, in Cork, where his father, John Wheeler Dowden, a man well known and much respected for his kindness of heart and generous help in all good works, was a linen merchant in the city. Much has been said of the Irish qualities of my father, but in reality the Dowdens have no claim to Irish blood. The name is an English one, and can be found among the English settlers whom the great Earl of Cork brought over in the seventeenth century from the south of England, and who formed a small colony in the country town of Bandon, not far from Cork. It was a little walled town which boasted strong Protestant sentiments and had over its gates this inscription :

> 'Jew, Turk, Infidel, or Atheist,
> May enter here, but not a Papist.'

It was from Bandon that my father's ancestors came. His father was a staunch Presbyterian and his mother, Alicia Bennett, a devout and earnest Churchwoman, but this difference in religious opinion did not cause any lack of harmony in the household, and my father constantly spoke with deep gratitude of how much he owed to both father and mother for the religious teaching of his early

years. He learned both the Church Catechism and the Shorter Catechism, and was brought up under the gentle discipline of wise and loving parents, in a home where duty and simplicity ruled. At school he was bright and quick in learning, showing at an early age a strong liking for natural and experimental science, and at the same time taking a lively interest in literature and philosophy. He was always ready and anxious to learn, and had a great respect and admiration, which he carried all through life, for those who taught him or who in any way imparted knowledge to him.

He had not many intimate school friends, but his younger and only brother Edward[1] was, in spite of the three years between them, his most congenial companion. They had many interests in common, the same love of books, the same desire for knowledge; and though upon some subjects, history in particular, they took opposite views, this did not lessen their affection for each other, which only increased with years. I do not know whether in their long arguments on the merits of Cavalier and Roundhead or of Wellington and Napoleon they ever convinced each other. My uncle used to defend the Roundhead, and with real eloquence put forward the claims of the French Revolution and the greatness of Napoleon, only to have some stern historical 'fact' or a crushing quotation flashed upon him from my father. I believe, when shown how splendidly the French fought and with what bravery the Old Guard had always distinguished themselves and how the French *ought* to have won at Waterloo, my father

[1] Professor of English Literature in the University, Dublin, since 1867.

would triumphantly get his history (an abridgment of Alison) and bring the controversy to a close by reading with great emphasis 'The Scots Greys, the Queen's Bays, and the Inniskillen Dragoons rode *down and over* the French at Waterloo';—a terrible '*fact*' and one to which there was no reply.

But these were early boyish days and hardly worth recalling if it were not that so often 'the child is father of the man,' and that in later years, when arguments of a more weighty kind were brought before my father, he had the same way of stating facts and of bringing many quotations of historical precedent to bear upon his side of the case. At sixteen he gained a classical scholarship at Queen's College, Cork, and about eighteen months later he went to Dublin to be examined for Trinity College, and for some months lived with a cousin of his mother, the Rev. George Salmon (afterwards Provost of Trinity College, Dublin), who was chosen to be his tutor. At that time nothing had been decided with regard to his future career; indeed, the general opinion was that he would enter the medical profession as he had shown a strong liking for it and had already studied medicine with much interest for a short time before leaving Cork. But his leaning towards the ministry was stronger, and, though no pressure was put upon him at home, both his father and mother readily approved of his decision to work for Holy Orders. In 1858 he entered Trinity College, Dublin, where he distinguished himself, obtaining his B.A. degree in 1861 with First-Class honours in Logic and Ethics, winning thereby a Senior Moderatorship and gold medal. He was not less distinguished in the

Divinity course, where he took First-Class in all the examinations.

In the various College Societies he took an active part, the Philosophical and Theological in particular, and in 1862 he delivered the inaugural address before the Theological Society, his subject being, 'Aids to Personal Religion afforded by Mental Science.' It was a remarkable paper for so young a man, and was published, and roused much interest at the time. In 1864 he was ordained deacon by the Bishop of Kilmore, and the same year he married and went as curate to St. John's Church, Sligo. Here he learned the work and organization of a large parish, with its four schools and a country mission, while the relationship between him and his rector, the Rev. Edward Day, was of the most delightful kind.

In 1865 the Bishop of Kilmore ordained him priest, and in 1867 he was made perpetual curate (incumbent) of Calry Church, Sligo. This was also a large parish with plenty of work to be done, some of which, I fancy, cannot have been very congenial to a man with such a scholarly bent of mind, but he always looked back with great pleasure on the eight years he spent so happily in Sligo, where he gained much experience, made life-long friendships, and was 'passing rich' on £70 a year.

My recollection of my father at this time is of a tall man with wonderfully bright blue eyes and very dark hair, who, though in a sense awe-inspiring, was much sought after by his children. The study, where 'noise, toys, and crying' were not allowed, was a paradise for us, and what happy hours we had there! Somehow toys did find their way into it, and my father's books, even

folios when not too heavy, were found very useful to build castles and forts with, while our laughter and what was called 'subdued merriment' did not come under the head of noise. The last part of the rule was more rigorously kept, though I do remember going to the study in tears and having them dried there. We did, I think, try to be quiet while my father worked, and when he had finished his writing he would play with us, or read to us, or tell us wonderful and delightful stories.

In 1870, while still in Sligo, he was made chaplain to Earl Spencer, Lord-lieutenant of Ireland. His duties as vice-regal chaplain were light, and meant little more than going to Dublin to preach in the Chapel Royal when it was his turn to do so. Two years later he was appointed assistant curate to Archdeacon Lee at St. Stephen's, Dublin.

During this time the Church of Ireland was much disturbed by the proposed revision of the Prayer Book, and the minds of many scholars were turned towards the study of the various forms of liturgy used in churches other than their own, and possibly it was in this way that my father's interests in the Scottish Episcopal Church were awakened. But of that I am not sure. He was already acquainted with its history, and was familiar with its Communion Office, the beauty of which no doubt appealed to him. A personal friend, the Rev. Percy Robinson, was headmaster of Glenalmond, and I believe it was due to him that my father's name was brought to the notice of the late Bishop Forbes of Brechin. He, with the other Scottish Bishops, in 1874, offered my father, much to his surprise, the post of Pantonian

Professor of Theology in the Theological College, which at that time was at Glenalmond, Perthshire.

He accepted the offer and came to Scotland, throwing himself enthusiastically into his new work, nor did his ardour seem to lessen on his finding himself a professor with only one student. That student, however, wished to learn, and was able to profit by the zeal and energy of his professor. But the most ardent teacher with only one pupil must have many hours to spare, and these my father devoted to the careful study of the Scottish Communion Office, a subject upon which, in later years, he became the accepted authority. He was very happy at Glenalmond, and the students increased to five or six in number, which gave a little more scope to his energy.

In 1875, a serious fire broke out, and, in spite of the excellent services rendered by both the boys and masters, half the college was burned to the ground. I have heard my father describe with much amusement the formality with which the alarming news was announced to him. He was working in the library, called the Jolly Library after the saintly bishop to whom the books in it had belonged, when, after a gentle tap at the door, one of the senior boys came quietly in and waited to be questioned. My father was rather surprised, as he had nothing whatever to do with the school or the boys, who only came to his house (which was part of the college) by invitation, or with a note from some of the masters, and he at once asked what was wanted. To which the youthful herald, with many apologies for intruding, replied, 'I thought you might like to know, Sir, that the college is on fire!' As soon as my father's living possessions were in safety his

thoughts went to the books belonging to the Theological Library, and he ran to the room in the central tower where most of these were kept, to see if there was still a possibility of saving them. Then he and his students were seen running up and down the long staircase which led to the library, their arms laden with folios, which were deposited in some safe place out of reach of the flames. But the fire spread rapidly, and the time for saving the books became so limited, that the only way of doing so was to throw the remaining volumes from the windows. To do this with as little harm to them as possible was the next thing to be thought of. To fling them far out with a dexterous swing of the arm, which sent them whirling horizontally through the air, so that they should not open in their fall, was found to be the best method, and in this way most, if not all of the books were saved. They can still be seen in Coates Hall, Rosebery Crescent, Edinburgh, where, in spite of the traces of mud and water which many of them bear to this day, they now form a useful and valuable part of the library of the Theological College.

After the fire some of the bishops thought it would be advisable to move the Theological College to Edinburgh, its original home, the remoteness of Glenalmond having been found a real drawback to the students, and after some difficulty this was agreed to, and the college was moved to Edinburgh. The students lived in rooms, and my father lectured to them, at first in his own lodgings and afterwards in old Coates House, Manor Place. Later on, a house was taken which served as a college, a vice-principal was appointed to live with the students, and my father, who had taken his D.D. degree at

Trinity College, Dublin, in 1876, lectured to them daily. His great desire that only the very best men, well educated and well trained, should take Holy Orders, made him extremely strict both as a teacher and in examinations; but at the same time there was no trouble he would not willingly take, in order to help or encourage his pupils in careful study, and he made every effort to inspire them with a love of accurate work for its own sake. He always put his best into whatever he did himself, and could not tolerate careless or inaccurate work in others. Teaching with him meant instilling into the pupil an absolute and thorough knowledge of the subject. He would explain the matter again and again with marvellous clearness and with all the fire of his illuminative power, and would give examples *ad infinitum* till he thought all possible doubt had been removed.

Then he would sometimes ask 'Now do you understand?' And if he detected a shadow of uncertainty in an affirmative reply, he promptly placed himself in the position of pupil by the alarming demand, 'Very well, then, explain it to me.' It was a sound, though sometimes painful, test of how far the student had grasped the subject in hand. Still teaching was a labour of love to him, and when his students distinguished themselves in the Oxford and Cambridge examinations (preliminary to Holy Orders) as they not infrequently did, no one was prouder of them or derived greater pleasure from their success, than my father.

Perhaps one of his most marked characteristics was the immense pleasure he took in the success of others. A recognition of thoughtful study, or an honour bestowed

upon someone for careful or original work gave him infinitely greater pleasure than any honour or glory for himself would have done.

In 1884, he published *The Annotated Scottish Communion Office*, which he dedicated to the bishops and clergy of the American Church. This book is, in itself, an example of the careful and painstaking labour he gave to all his work, and, though now out of print for many years, is still the standard work on this subject.

In 1885-6, he was Donnellan Lecturer in the University of Dublin, and, in 1886-7, Select Preacher there, and Select Preacher in Cambridge in 1888.

In 1886, when the See of Edinburgh was vacant through the death of Bishop Cotterill, my father was mentioned as his successor, but on hearing that Canon Liddon was also going to be proposed, he asked to have his own name withdrawn. Canon Liddon, however, while considering the offer of the bishopric 'the greatest honour that had ever been done him in the whole course of his life,' did not see his way to accept it, and my father was then elected. He was consecrated on the 21st of September, 1886, by the Bishops of St. Andrews, Aberdeen, Argyll, Brechin, Glasgow, Moray and Ross, and the Bishop of Durham (Dr. J. B. Lightfoot), who travelled from Braemar to be present at the ceremony, a mark of esteem and friendship which my father much appreciated. The Rev. Dr. Salmon, whose friendship my father valued so much, came from Dublin, and preached a remarkable sermon on 'Episcopacy in relation to Unity.' The change from professorial duties to those of a diocesan was great, and my father felt all the responsibility of coming after so

great a man as Bishop Cotterill, but he was comparatively young, forty-six, and he threw himself with his usual energy into his new life. He could not, however, entirely break his connection with the students, and he retained the post of Bell Lecturer at the college, where he lectured once a week during the term. In this way he never lost touch with the students, and his interest in them and in the welfare of the college was keen to the very end. His last lecture was given there two days before his death.

During his long episcopate of over twenty-three years he laboured with untiring zeal for the welfare of his diocese and the good of the Church at large, putting his best unsparingly into all his work, and giving gladly of his knowledge and learning to all who sought them. He was always ready to listen to his clergy, or to members of their satisfied or dissatisfied congregations, to help, to encourage, to advise, or to admonish if need be, and no one ever came to him in a difficulty without getting careful and thoughtful help. He was a true scholar ; his search after truth, his love of accuracy, his determination to find out facts before giving judgment made his opinion of real value ; and his great fairness of mind, his reverent handling of history, and his ready and loyal obedience all through life to those placed in authority over him made him, when he became a bishop, a firm and wise ruler of men.

In controversies he was a most generous opponent, and he must often have found it difficult to restrain his quick and trenchant power of reply, which sometimes flashed out like a rapier thrust to the complete disarming of his

adversary. He was, however, very indifferent to attacks made upon himself, and in the early days of his episcopate these were fairly frequent and sometimes venomous, and on these occasions when asked what he was going to do, he generally replied, 'Oh, I shall take no notice.' But when some other person was the victim of an unfair attack, especially if that person were not in a position to defend himself, then there was no hesitation, and my father showed himself to be a vigorous fighter and a fearless champion on behalf of what he thought right and just, but he never wished to hurt or wound, and it was only with shams or 'superior people' that he ever dealt really severely. His reason for not saying sharp things, which would have displayed his wit and power of repartee, was very simple and characteristic of him, and though the sparkling of his eyes sometimes betrayed a brilliant satirical thought, it often remained unsaid, because to say it 'wouldn't have been kind.'

During the summer of 1890 my father was far from well, but he made very light of it, and no real attention was paid to the matter at the time. In November he became extremely ill, and in January, 1891, a serious operation was thought advisable. Happily, under the care of clever doctors and most skilful surgeons, he made a complete recovery. His own brightness and gaiety made the long months of his convalescence full of happiness for us and those around him. To 'bear much suffering with Christian resignation' suggests a certain amount of gloom, and gloom was unknown in the presence of my father, nor can the word resignation ever be applied to his cheerful and ready acceptance of life with

all its difficulties. Of him, as of another teacher, it may be said :

> 'In the gloom of November we pass'd
> Days not dark at thy side ;
> Seasons impair'd not the ray
> Of thy buoyant cheerfulness clear.'
> 'If, in the paths of the world,
> Stones might have wounded thy feet,
> Toil or dejection have tried
> Thy spirit, of that we saw
> Nothing—to us thou wast still
> Cheerful, and helpful, and firm !'

As he improved in health his intellectual activity returned with renewed force, and it was not easy to prevent him from overtaxing his strength in his desire to make up for the months he had been laid aside. Some one suggested *festina lente* as a wise motto, but his activity of both mind and body made it impossible for him to take life easily, and early in the autumn of the same year he was in the full swing of work once more. The only traces of his long illness were his deeply bowed figure and his almost snow-white hair, which contrasted curiously with his keen, bright eyes and youthful, springy step, but which, no doubt, made him look ten or twelve years older than he really was. It amused him when, a few years later, he was described in some American papers as the 'venerable Bishop of Edinburgh,' and reference was made to 'the picturesque figure of this venerable bishop.' And indeed he did look picturesque and venerable, though only fifty-six.

In 1894 he published *The Celtic Church in Scotland*, a small book which had a wider circle of readers than some

of his earlier works, and which gained a popularity he never expected for it.

In the autumn of 1896 he went to America, having been asked to lecture before the General Theological Seminary, New York. Though he did not go as a complete stranger, knowing as he did many of the American bishops and a large number of their clergy, still he was quite unprepared for the cordiality of his reception. A bishop from Scotland would always be warmly welcomed in America, the American Church never forgetting that she owes her first bishop to Scotland, but the welcome extended to my father was largely due to his being the author of *The Annotated Scottish Communion Office*, which had been widely read in the States, and from which many Americans learned how much their own liturgy, especially in its most striking features, resembled that of the Scottish Episcopal Church.

Besides New York my father visited Philadelphia, Washington, and several other cities of interest, and made a short tour in Canada, stopping at Montreal and Quebec. He spent a few very happy days at Niagara with his brother, who was also lecturing in America that autumn, and who had planned his trip so as to arrive at Niagara the same day as my father. Nothing could have given my father greater pleasure than this meeting, the companionship of my uncle and aunt adding in every way to his enjoyment, while they both wrote describing his vigorous health and good spirits, and his wonderful interest and pleasure in everything. The whole trip was a success, and my father brought back a vivid impression of the charming people he had met, of their great hospitality

and of the innumerable kindnesses he received wherever he went.

The memories of this visit were very happy ones, and the kindly sympathy, together with the expressions of reverence and admiration for my father, which have poured in upon us from America since his death, show us that there too it was not only for his books and learning that he was loved.

In 1897 the lectures he had given in New York were published under the lengthy title, *Outlines of the History of Theological Literature of the Church of England from the Reformation to the close of the eighteenth century.* And in 1899 he published *The Workmanship of the Prayer Book.* There was, perhaps, no subject in which he took a deeper interest than the study of the Prayer Book. His thorough knowledge of every detail connected with the compiling of it, so clearly shown in this book and also in his *Further Studies in the Prayer Book*, which appeared in 1901, drew from a learned Cambridge professor the comment, 'There is only one man living to whom I would entrust a revision of the Prayer Book, and I would entrust it to him single handed, and that is the Bishop of Edinburgh.' Certainly no one would have treated the subject with more reverential love or given more painstaking labour to it.

In spite of his extremely busy life, with its innumerable diocesan duties which naturally came first with him, he found time, or rather he made time for useful literary work of a different order, and when the Scottish History Society was formed in 1886 it is interesting to note what an active part he took in its formation. Indeed he had already discussed with the late Dr. T. Graves Law,

Librarian of the Signet Library, the possibility of starting a society of a similar kind, when a letter from Lord Rosebery appeared in the *Scotsman* (February, 1886), pointing out how useful a society would be which would give its attention to bringing out inedited matter of Scottish historical interest. My father took up the idea very warmly, and as Dr. Law said, 'generously offered to merge his own scheme in the broader one outlined by Lord Rosebery.'

A committee was then formed under the convenership of my father, and the Scottish History Society was started under the most favourable circumstances, with Lord Rosebery as its president, the late Professor David Masson as chairman, and the late Dr. T. Graves Law, to whose indefatigable energy the Society owed so much, as honorary secretary. Its first meeting was held in the Theological College, Rosebery Crescent, and from the outset my father took the keenest interest in all its work and publications. His own contributions to it were few; his first being the *Correspondence of the Lauderdale family with Archbishop Sharp*, which appeared in 1893, and ten years later *The Chartulary of the Abbey of Lindores*. This latter was a new kind of work to him, and for two years he gave all the time he could spare from diocesan duties to the careful production of this book. In 1908 he was joint-editor with Mr. William Alexander Lindsay, K.C., and Dr. J. Maitland Thomson, of the *Charters of Inchaffray Abbey*. He himself thought he had begun the study of charters too late in life to make any work of his of real service, but he was, however, soon as deeply engrossed in them as in anything else he undertook, while the intercourse with record scholars and men

of learning, which such study naturally involved, gave him immense pleasure and brought a new interest and happiness into his later years.

The many other societies to which he belonged also claimed a share of his attention. There were meetings to be attended, lectures or addresses to be given, and he readily took his part in the busy intellectual life of the present day ; always glad when any work of his could be of use, and still more glad when he was allowed to be a member of the audience, seizing, as he always did, every opportunity of gaining knowledge. To find out the truth, to make sure of some knotty point in history, to know what really did happen,—these were the matters of vital importance. Old manuscripts and dry records of history were full of living interest to him. Every detail that threw light upon a difficulty was a joy, every point that told for or against his own views was noted down, to be laid honestly before the world so that it could judge rightly and well. Theories and suppositions faded completely before facts, and it is interesting to find the Ethical Gold Medallist of 1861 saying, as he often did of late years, 'To make *certain* of one fact in history gives more satisfaction to me now than all the metaphysical problems in the world.'

The power of being interested in almost any subject was, no doubt, one of his great attractions. It drew people of all ages round him, not only because it was pleasant to find someone who was as keen upon your own hobby as you were yourself, but someone who enjoyed finding out more material for you and made you doubly interested in your own subject. And he had in himself the power of

infusing life and interest into any subject, however dry, upon which he discoursed. This, I think, showed itself much more in his lectures than in his books, and still more in his every-day life, where the charm, vitality and brightness of his presence created an atmosphere of life and light. A very clever man, of whose brilliancy my father always spoke in glowing terms (and he did not lavish praise indiscriminately on people), said, in speaking of my father, 'I never knew how interesting any subject was until I had talked to him about it and heard his views; he always threw new light upon the matter, and I used to come away having gained more knowledge and a deeper insight into things.'

My father was not absent-minded or dreamy in the ordinary sense of the word, though he sometimes appeared so, because he concentrated all his attention upon whatever he was working at for the moment, and often became so absorbed in it that he lost all count of time, or place, or things. I have frequently watched him walking about the room at breakfast time, a picturesque figure in his long purple cassock, which he wore for warmth, stopping every now and then to take a book from the shelves and read for a few minutes. Then, after pacing up and down again, completely wrapped in thought, he would move gently towards the door, quite unconscious that his breakfast was untouched. I sometimes waited till he was just leaving the room to ask, 'Aren't you going to have any breakfast this morning?' And he would come back much surprised to find he had eaten nothing, and would say, 'I daresay you are right, my child, but if you had told me I had had my breakfast I should have been quite satisfied, perhaps it

would be wise to eat something. Thank you for reminding me.' And he would take a little toast and a cup of coffee, standing all the time, and go away smiling at his own 'stupidity.'

Much loving chaff went on between him and us over little incidents of this kind, which he described as 'sheer stupidity,' and which, we thought, more often showed an absolute forgetfulness of self. The relationship between him and his children was, I think, very rare. He was absolutely and completely our comrade and companion without ever losing the dignity and authority of a father, and it would be quite impossible to describe how fully and entirely he entered into the individual life of each one of us. From our very early days he read much to us. Scott, Thackeray, Dickens, Jane Austen and a host of other authors became familiar to us through him. He read beautifully and with much feeling, the emotional side of his nature being readily moved by touching incidents or heroic actions in the lives of friends like Pendennis, Colonel Newcome, Warrington, David Copperfield, or the Cratchit family, for whom he had a particular affection, and he was sometimes obliged to stop reading so that we might all dry our eyes and laugh at our own tears.

He was very critical on reading aloud, and always urged strongly that theological students should be well trained in this before taking Orders. He thought it a disgrace to have the beautiful language of Scripture rendered unintelligible or sometimes even ludicrous by the careless reading of some young man who was too grand to learn how to read, or too dull to understand what he was reading; he frequently said that all people who aspired to reading aloud

should be asked as the Ethiopian was by Philip, 'Understandest thou what thou readest?' Emphasis laid on a wrong word was like a false quantity in Latin, and made him shudder, while poetry badly read gave him, I think, physical pain.

He was a great lover of Wordsworth, Shelley, Tennyson, Browning, Blake, and Rossetti, and indeed many others. Christina Rossetti, too, was dear to him, and he considered that some of her sonnets placed her in the very first rank of sonnet writers. I see by a little old note-book which belonged to him in Sligo, and into which he had copied some of his favourite verses, that even in those early days his admiration for her was great, as he makes this comment on her *Autumn Violets*—'One of the most perfect sonnets in the English language.'

Sonnets, I think, appealed even more to him than other verse. Possibly the difficulty in their construction added to their charm, for he liked to see a difficult thing well done. His own sonnets, some of which are in the same old note-book, though others, I fear, have been destroyed, have been described as possessing 'rare beauty,' and they certainly do. But he did not profess to be a poet, though few people who heard him read Blanco White's great sonnet on 'Night and Death' or 'The Ocean' by Tennyson-Turner, or Christina Rossetti's 'Remember me when I am gone away' could fail to recognise in the ring of his voice or the light in his eye the soul of the true poet and his love of the beautiful.

Pictures and music were also a joy to him, and he derived immense pleasure from them both, not only because 'a thing of beauty is a joy for ever' and good

music brings comfort to the soul, but because he had sufficiently acquainted himself with many of the difficulties in art to be able to criticise and admire at the same time : an interest in the construction of music also added much to his natural delight in listening to it. Sometimes when very tired after a long day of work in the study with incessant interruptions which would have driven most people wild, and which must have tried him terribly, he would come to the drawing-room and ask for 'a little music to refresh me.' Then one of my sisters would play for him, and he would ask for something of Chopin or Mendelssohn or Beethoven, and after a time he would say 'Now I feel as fresh as if I had had a swim in the sea,' and he would go back to the study and his work again.

And music of a lighter kind attracted him too. Strains of the Gilbert and Sullivan operas often drew him from his books for a short time ; he was tempted, he used to say, by cheerful sounds to 'join the general merriment,' and we were all the merrier when he came. He was very fond of Sir Arthur Sullivan's music, which he thought too good to be devoted to comic opera, and he thoroughly appreciated Sir W. S. Gilbert's subtle humour with its touches of sarcasm and mockery of conventionality and worn out phrases. His frequent quotations from these operas and from the *Bab Ballads* showed how much they appealed to his own sense of humour. He rarely went to the theatre, though he dearly loved a good play and used to be completely carried away by a piece of fine acting. But the getting to and from the theatre, added to his reluctance to leave his books for so long, became real difficulties, especially latterly when he seemed to

grudge any time not spent in work, having, he said, so much he wished to do and feeling that 'the time was getting short.'

It was the same with his holidays. He seldom went away, and sometimes when he did books and work went with him. But there were glorious occasions when he left both behind and thoroughly enjoyed himself without them. He had very happy memories of his few trips abroad. His first was with his brother when they were boys. My father, I think, was nineteen or twenty, and they went by Rouen and Paris to Strasburg and the Rhine. Their different views on Wellington and Napoleon did not interfere in any way with their enjoyment, which my father said would have been 'complete,' but for his anxiety about his brother, who had not been strong and who overtaxed his strength sightseeing, and while at Rouen was threatened with haemorrhage from the lungs. But young people get well quickly, and no real harm came of this attack, and I believe that when they got to Strasburg they were equally anxious to climb the cathedral spire. He often talked of this trip. Years afterwards he went abroad with Dr. Salmon, and in 1897, after a hot summer in London and heavy work at the Lambeth Conference, he and one of my sisters went to Switzerland.

No words can describe my father's enjoyment of this trip or his enthusiasm over the beauty of Lucerne and Interlaken. They spent a week in Paris on their way home, and if they had stayed there a little longer he would have been as well known at the old book stalls on the quays as he was at the old book stalls in Edinburgh,

where to see him bending over some old volume was a most familiar sight.

Four years ago he went to stay with friends in Norway —friends with whom he had many interests in common —and he enjoyed himself immensely. The house was full of young people who were always bright, and he was close to the sea which he loved, and could go swimming every day. Swimming was, I think, the only form of physical exercise he cared for. He was a strong swimmer, and I remember, long ago in Dublin, his saving a drowning boy who had fallen into the canal while sailing a boat. We, as children, thought it must have been great fun to go in with all your clothes on, and have your watch stop the moment it touched the water. But there were no alarming incidents of this kind in Norway; the visit was altogether a happy one, and he came home looking years younger and full of life and vigour. That was his last real holiday, and he enjoyed it thoroughly. He generally thought a day in the country or a few hours by the sea was quite sufficient holiday for himself, and a very simple way of getting fresh air without too much fatigue was to go on the top of the tram as far as the tram would go, then take a short walk in the country, and home by tram again and back to work in the study once more.

The Study: who could describe it with all its books and papers and dust? And there was a great deal of dust, for very few hands were ever allowed to touch anything there, and 'tidying,' my father thought, was putting things where no one could find them. But in spite of the dust and the piles of books which covered the chairs and tables and desks, and literally mounted from floor to

ceiling, it was always the most delightful room in the house. People who could overlook these drawbacks and who did not object to the smell of smoke, for my father loved his cigarette, found there a wealth of interesting things and a fund of knowledge and learning entirely at their disposal, together with a most gracious welcome. How my father could detach himself from his work to give his full attention to some other person's business, sometimes quite a trivial affair, was always a marvel to me, and it was only on very rare occasions and under great pressure of work that the study was not accessible to all comers from ten in the morning till half-past seven at night.

My father's love of children has been so often spoken of that it seems superfluous to make any comment on it. He loved them all, and could not believe that such a thing existed as an unattractive child, or a not beautiful baby, and they loved him. Many stories could be told of the conversations which went on in the study, where, in spite of the ancient rule, toys were kept for special friends.

His love of animals must also be noted, for they had a large share in his affections. Dogs, and cats, too, recognised in him a good friend. A large smooth-haired retriever, with expressive eyes, knew that if he were accused of slyness he would find a champion in my father, and a fox terrier hailed every visit from my father with delight, knowing that it meant a new ball for him and plenty of play in the garden. And in the study it was no uncommon thing to see a small and insignificant looking cat in possession of the most comfortable chair, while my father stood or asked for another chair, because it would be 'a pity to disturb the little creature.'

He was much gratified when, in 1904, Edinburgh University conferred an honorary LL.D. upon him, especially as this brought honour to the Church and diocese he loved so well. The year before, the same honour had been conferred on one of his friends, for whose learning and scholarly attainments he had a profound admiration, and we could not help remarking that his pleasure and gratification were much greater on that occasion than when he himself was the recipient.

In 1908, he spent July in London attending the Lambeth Conference. Not being very well when he left home, his intention was to do little more than listen to interesting discussions on Church questions, and give advice if wanted. But no sooner had he arrived than he was asked by the Archbishop to go on various committees, to which he consented, and was immediately completely engrossed in work from morning till night. He enjoyed it all greatly, and, though he used to quote W. S. Gilbert's lines on 'Bishops in their shovel hats,' it was a real pleasure to him to meet so many other theologians and ecclesiastical scholars with whom he could discuss some of the difficult Church problems of the day. This intercourse and exchange of ideas with so many other bishops was a change of intellectual food which agreed very well with him, and he came home greatly improved in health and spirits. Bishops from various parts of the world visited Edinburgh that autumn, and naturally there was much talk about Lambeth and the Pan-Anglican Conference. Those who had been on committees with my father were deeply impressed by the profundity of his learning and the accuracy of his statements. They

said they all owed him a debt of gratitude for his kindly humour and brilliant wit, which on several occasions had brightened up an atmosphere tending towards heaviness, and it was a relief to find that lightness of heart was not incompatible with the scholarly mind.

In 1909, he spent the summer busily preparing various works for publication, and last January, a few days before his death, he spoke of these Rhind lectures, and a book on Scottish bishops of medieval times, which he thought would be a useful book of reference, being ready for the press. He was glad he had them finished, and felt he had put good work into them, and added, cheerily, 'But there are not ten people who will care to read them!' His opinion of the limited number of his readers was always a subject of amusement between him and us; but he never sought popularity either as a preacher or a writer, and was quite happy in the thought that what came from his pen was accurate, and could be relied upon.

On the 28th of January, 1910, he lectured as usual at the Theological College, saw three or four people in the afternoon, and in the evening a few friends dined with us to meet the Bishop of Barrow-in-Furness who had come to address a missionary meeting that night. My father did not go to the meeting, having been persuaded not to run the risk of getting chilled, as it was a particularly cold night. The following day he was busy as usual and saw various people, some of whom came on business and some merely out of friendship. He was well and bright on Sunday, too, and saw several friends and showed his usual keen interest in all their doings. In the evening he spoke

of not feeling very well, and only waited up to see my brother and his wife, who always came to us on Sunday evenings. He did not mention to them that he was unwell, but talked for some minutes about the general election, in which he was much interested ; then said grace for supper and went away. They thought he had gone back to the study to get a book and were surprised to hear he had gone to bed, as he had shown no sign of illness and was looking well. My brother, who is a doctor, went up to see him, and finding no cause for alarm came back to suggest something which would relieve the pain in his chest of which my father spoke. A few minutes later when my sister and I went into his room we found him as if he were asleep. There was no trace of pain or suffering on his face—only a smile and a look of rest.

In the many appreciations which have appeared about my father, references have been made to his 'many great qualities and many great endowments.' Knowledge, learning, humour, kindness, sympathy and chivalry have been attributed to him, and to these I should like to add two more qualities which were, I think, more clearly seen in his daily life and by those who came in constant contact with him—his simplicity and his generosity of mind and heart. His large open mind, incapable of a mean thought, gave credit to his fellow creatures for the same lofty ideas and the same integrity of purpose as his own. When some dishonourable action or some meanness of thought (and all meanness he abhorred) was forced upon his notice he would be excessively angry for a time: then with the

same large-minded generosity he forgave, and when he forgave he forgot. He never bore a grudge or harboured an unkind thought of anyone.

In his generosity of heart he gave freely of all he had and of what he loved most—his books.

Innumerable times I have watched him handling with tender care some cherished volume while he pointed out its charms and merits to some other book lover. Then looking up quickly he would ask 'Do you like it? does it appeal to you?' and if his sharp scrutinising glance was satisfied that it was appreciated there might be a moment's hesitation, there sometimes was, and then the overflowing of his generous heart would show in every line of his face as he would say 'take it, take it if it gives you any pleasure, I shall be delighted,' and he would turn quickly away to show some other book and so escape the thanks which always embarrassed him. He shrank from being thanked, and thought that, as a rule, people were much too grateful for any act of kindness on his part. Sometimes, when the conversation in his presence turned on the ingratitude of the world at large and of some people in particular, and conversation of this kind irritated him extremely, he would always say 'I have never found it so,' and would quote these lines from his much loved Wordsworth :

> 'I've heard of hearts unkind, kind deeds
> With coldness still returning.
> Alas! the gratitude of men
> Hath oftener left me mourning.'

And his simplicity, which was the simplicity of strength and dignity, was so much a part of himself that it is difficult to disconnect it sufficiently to comment on it.

He was simple in everything, simple in his way of living, simple in his pleasures and amusements, simple in the courage of his opinions and in his method of stating them, and simple in his gentle courteous manners. When vested in full canonicals for some great service, amid all the pomp and glory of elaborate ceremonial, the simple dignity of his presence filled the mind with the thought of the 'holy and humble men of heart' who praise the Lord.

My father was asked to give the Rhind lectures for 1901 to the Society of Antiquaries of Scotland, and selected as his title, *The Constitution, Organisation, and Law of the Medieval Church in Scotland.* The subject was one that he had much at heart, but he was unable to deal fully with it in the original course of six lectures. In the following years he greatly added to, and altered, his original manuscript, until shortly before his death he had completed the work, and left this volume as it is now printed. We are deeply indebted to Mr. MacLehose not only for offering to publish the lectures and for the work he has bestowed on them, but for his many kindnesses during my father's lifetime in connection with much of his work. The proofs have been read by Mr. George Neilson, LL.D., and by the Rev. James Wilson, Litt.D., of Dalston, and we should like to thank them, as I know my father would have done, for their helpful suggestions.

Another book which my father had practically finished was on the Scottish Bishops of Medieval Times. It was not quite ready for the press, and only a few words of the

preface had been written. We feel that no greater tribute could have been paid to the memory of my father than that the difficult and laborious task of verifying the many facts and references contained in such a work should have been undertaken by Dr. J. Maitland Thomson, from whom my father always received much help, and especially in the writing of this book on Scottish Bishops. How much he valued that help Dr. Maitland Thomson perhaps never realised; but it is peculiarly gratifying to us that it is due to the kindness of one whose assistance gave my father great pleasure, that we can look forward to this volume on Scottish Bishops of Medieval Times, my father's last work, being made available for other students.

ALICE DOWDEN.

EDINBURGH,
1st October, 1910.

LIST OF BOOKS REFERRED TO UNDER SHORTENED TITLES

Aberdeen Breviary. See Breviar.

A.P.S.—Acts of the Parliaments of Scotland. Record Commission. 1814-1875. 12 vols.

Asloan's MS.—Ane Addicioun of Scottis Corniklis and Deidis (commonly cited as Auchinleck Chronicle). Ed. T. Thomson. 1818.

Assize of King William.—Included in A.P.S. (vol. i. pp. 371-84).

S. Bernardi opera. 1765. 3 vols.

Book of Assumptions.—Assumptions of the Thirds of Benefices, 1561. MSS. in General Register House and Advocates' Library, Edinburgh.

Brady's Episcopal Succession.—The Episcopal Succession in England, Scotland and Ireland, A.D. 1400 to 1875. By W. M. Brady. 1876-77. 3 vols.

Breviar. Aberdon.—Breviarium Aberdonense. Bannatyne, Maitland and Spalding Clubs. 1854. 2 vols.

C.P.R.—Calendar of Entries in the Papal Registers relating to Great Britain and Ireland. Rolls series. (*a*) Papal Letters A.D. 1198 to 1447. 1893-1909. 8 vols. (*b*) Petitions to the Pope, A.D. 1342 to 1419. 1896.

Cambusk. See Regist. de Cambusk.

Chartulary of Cambuskenneth. See Regist. de Cambusk.

Chart. of Priory of Coldstream.—Chartulary of the Cistercian Priory of Coldstream. Grampian Club. 1879.

Chronicle of Lanercost ; Lanercost.—Chronicon de Lanercost. Bannatyne Club. 1839.

Chronicle of Melrose ; Chron. Mailros.—Chronica de Mailros. Bannatyne Club. 1835.

Collections, etc. ; Collections Aberdeen and Banff.—Collections for a History of the Shires of Aberdeen and Banff. Spalding Club. 1843.

Corpus Juris Canonici.—Corpus Juris Canonici, a P. Pithoeo et F. fratre restitutum. 1687. 2 vols.

Cronykil. See Wyntoun.

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De Officiis Divinis. See Strabo.

De Reb. Gest. See Lesley.

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Decret. Greg. IX.—Decretales Gregorii IX. Included in Corpus Juris Canonici (vol. ii. pp. 1-282).

Decretum.—Decretum Magistri Gratiani. Included in Corpus Juris Canonici (vol. i.).

Douglas' Peerage ; Wood's Peerage.—The Peerage of Scotland, by Sir Robert Douglas ; second edition, revised by J. P. Wood. 1813. 2 vols.

Ducange.—Glossarium Mediae et Infimae Latinitatis conditum a Carolo Du Fresne Domino Du Cange. Auctum a Monachis Ordinis S. Benedicti. 1733. 6 vols. (Often reprinted.)

Eadmer, Hist. Nov.—Historia Novorum in Anglia. Rolls series. 1884.

Epist. Reg. Scot.—Epistolae Jacobi Quarti, Jacobi Quinti et Mariae, Regum Scotorum. 1722-24. 2 vols.

Eubel.—Hierarchia Catholica Medii Aevi. 1898-1901. 2 vols.

Extracta ex variis Cronicis.—Extracta ex variis Cronicis Scocie. Abbotsford Club. 1842.

Ferraris.—Prompta Bibliotheca Canonica Juridica Moralis, etc. 1782-94. 11 vols.

Florence of Worcester.—Florentii Wigorniensis Monachi Chronicon ex Chronicis. English Historical Society. 1848-49. 2 vols.

Fordun. See Skene.

Frere (W. H.).—Use of Sarum. 1898-1901. 2 vols.

Frere.—Sarum Customs. Vol. i. of the preceding.

Geoffrey, Sacrist of Coldingham. See Historia.

Gneist, Hist. of the Engl. Constit.—History of the English Constitution. Translated by Ashworth. 1891.

Hailes' Annals.—Annals of Scotland, by Sir David Dalrymple of Hailes. Third edition. 1819. 3 vols.

Hamilton's Catechism.—The Catechism of John Hamilton, Archbishop of St. Andrews. Ed. Law. 1884.

Historia de Statu Ecclesiae Dunelmensis.—Liber Gaufridi Sacristae de Coldingham de Statu ecclesiae Dunelmensis. In Historiae Dunelmensis Scriptores Tres. Surtees Society. 1839.

Hist. Maj. Brit. See Major.

Hist. Nov. See Eadmer.

Keith's Catalogue.—An Historical Catalogue of the Scottish Bishops down to the year 1688. New edition. 1824.

Keith's History of Affairs, etc.—History of the Affairs of Church and State in Scotland from the Beginning of the Reformation to the year 1568. New edition. Spottiswoode Society. 1844-50. 3 vols.

Lanercost. See Chronicle.

Leges Burgorum. Included in A.P.S. (vol. i. pp. 333-356).

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Lesley (John, Bishop of Ross), De Reb. Gest.—De Origine Moribus et Rebus Gestis Scotorum Libri decem. 1578.

Lib. de Aberbrothoc ; Reg. Vetus de Aberbrothoc.—Liber S. Thome de Aberbrothoc. Registrum Abbacie de Aberbrothoc. Pars Prior, Registrum Vetus. Pars Altera, Registrum Nigrum. Bannatyne Club. 1848-56. 2 vols.

Lib. de Calchou.—Liber S. Marie de Calchou. Bannatyne Club. 1846. 2 vols.

Lib. de Dryburgh.—Liber S. Marie de Dryburgh. Bannatyne Club. 1847.

Lib. de Melros.—Liber Sancte Marie de Melros. Bannatyne Club. 1837. 2 vols.

Lib. de Scon.—Liber Ecclesie de Scon. Bannatyne Club. 1843.

Lib. Off. S. And.—Liber Officialis Sancti Andree. Abbotsford Club. 1845.

Lincoln Statutes.—Statutes of Lincoln Cathedral, arranged by H. Bradshaw, edited by Chr. Wordsworth. 1892-97. 3 vols.

Lyndwood's Provinciale.—Provinciale seu Consuetudines Angliae. 1679.

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Maskell's Mon. Rit.—Monumenta Ritualia Ecclesiae Anglicanae. 2nd edit. 1882. 3 vols.

Memo. of Montgomeries.—Memorials of the Montgomeries, Earls of Eglinton. By W. Fraser. 1859. 2 vols.

Myln. See Vitae.

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Papal Registers. See C.P.R.

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Regiam Majestatem.—Included in A.P.S. (vol. i. pp. 597-641).

Reg. Dunelm. de Cuthberti Virtut.—Reginaldi Dunelmensis Liber de admirandis Beati Cuthberti Virtutibus. Surtees Society. 1835.

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R.A.; Reg. Aberd.—Registrum Episcopatus Aberdonensis. Maitland and Spalding Clubs. 1845. 2 vols.

R.B.; Reg. Brech. Registrum Episcopatus Brechinensis. Bannatyne Club. 1856. 2 vols.

Regist. de Cambusk.—Registrum Monasterii S. Marie de Cambuskenneth. Grampian Club. 1872.

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INTRODUCTION

The design of the following pages is to give some account of the more important features in the organisation of the medieval Church in Scotland, and of the laws, whether civil or ecclesiastical, by which its action was controlled or regulated.

The ordinary topics of ecclesiastical history—the story of the varying vicissitudes of the Church's fortunes, the events that were favourable or hostile to its influence, the lives and characters of the leading ecclesiastics, the succession of the bishops in the several sees, the struggles of rival prelates, the burnings of cathedrals and monastic edifices, the ravages of the Church's property, and the other miseries consequent on the long series of invasions and destructive wars which distracted the country, the occasional and sporadic appearance of forms of belief at variance from the prevailing and recognised faith of Western Christendom—these, and such like topics, though abounding in interest, concern us, for the purposes of these Lectures, only indirectly, and often only remotely. The subject which will occupy us is the system of ecclesiastical organisation,—the methods by which the Church was maintained, as viewed on the material side of its being, the methods by which it attempted to do its spiritual work for the country, the laws which governed its operations, and the manner in which these laws were administered.

The period of time with which it is proposed to deal extends from the death of King Malcolm Ceanmore to the great ecclesiastical revolution of the sixteenth century, which is commonly spoken of as the Reformation, when the whole external structure of the medieval Church in

Scotland met its overthrow. The lifetime of Malcolm and his queen, St. Margaret of Scotland, marks the beginnings of the transition from the Celtic to what, for lack of a better name, we may call the feudal forms of Church organisation. And by the time of the death of the last of the sons of Malcolm and Margaret the Church in Scotland, in almost all the main features of its constitutional system, presented a close counterpart to the Church in England and in most of the countries of Western Europe.

By the middle of the twelfth century we find that the mainland of Scotland was divided into nine several dioceses, each presided over by a bishop, with his council, consisting of the members of his cathedral chapter.[1] Each diocese, again, was divided territorially into a large number of small sections, known as parishes, to each of which was assigned a priest to minister in sacred things to the inhabitants. A complete network was thus formed over the whole face of the country. Beside the great body of the secular clergy there were to be found a number of monastic orders, which, as distinguished from the old Celtic foundations, had their origin on the continent. Monasteries, large or small, of various orders, had been planted, or were in process of time being planted, in almost every region of Scotland. Lands had been granted, sometimes with profuse generosity, for the maintenance of both seculars and monks. Teinds were exacted with punctilious scrupulosity. The wealth of the ecclesiastics as a body was already great, and was still growing. The power and influence of the Church, at all events on its material side, were indeed vast. In the following century the Franciscans, the Preaching Friars, made their appearance, and their houses were soon to be found in every considerable town.

The whole body of the secular clergy were governed by a code of law that had come to be universally recognised as the law of the Church of the West. Even the laity, in some of the most important relations of life, were subjected to the ordinances of the Canon Law. The members of

[1] I have not counted Galloway, as it was under the jurisdiction of York. Argyll was not erected till about 1200. Orkney and the Isles were under the jurisdiction of the Archbishop, first of Hamburg, and afterwards of Trondhjem. See p. 9.

the various religious orders were governed not only by the general provisions of the Canon Law, but also in each case by the distinctive 'rule' of the order. And the cathedrals, and at a later date the other corporations, known as collegiate churches, had each statutes and ordinances binding on their own members. Beside the great body of ecclesiastical statutes which were gradually collected, and eventually formed the code known as the *Corpus Juris Canonici*, constituting the general law of the Church throughout Western Christendom, the legislation of local synods gave rise to certain minor rules and regulations by which the secular clergy were governed. Some acquaintance with both the general body of the Canon Law and the body of statutes enacted by Scottish synods is essential to any successful attempt to reconstruct in imagination church life in Scotland during the middle ages.

But the study of legislation does not in itself suffice to present us with a true picture of the actual facts of life, or of the condition of things in the practical conduct of affairs. Laws may, conceivably, be the best possible, but they may be rendered worse than inefficient if they be laxly or corruptly administered. It will therefore be necessary to consider what was the actual practice in the administration of ecclesiastical statutes, and to say something of the system of papal dispensations which were profusely granted, and which in real life largely modified the provisions of the written law.

In illustration of our subject constant reference will have to be made to the contemporary legislation of the synods of the Church of England, whether provincial or diocesan. There were few differences of importance between the constitutional systems of the two Churches. And the evidence is beyond dispute that the Scottish Church exhibited but little initiative in the matter of ecclesiastical legislation, ordinarily adopting her statutes and ordinances from the constitutions of the Church of England, sometimes with slight modifications, but more generally with none.[1]

[1] I had written these words before the appearance of the Inaugural Lecture by Professor Hume Brown. 'The Reign of David I.,' he

Again, the paucity of the Scottish church records which have survived the destructive ravages of the time of the Reformation compels the student of the ecclesiastical history of medieval Scotland to turn to English documents for explanations and illustrations. It may be stated with confidence that the inquirer who confines his studies to the meagre remains of Scottish ecclesiastical law will inevitably, in hundreds of cases, miss their true significance, and fail to interpret them correctly. As in the case of the scanty records of Celtic Christianity in this country we have to resort for illustration to the rich stores supplied in the ancient manuscripts and archaeological remains of Ireland, so for the medieval period we have need constantly to recur to the comparatively exuberant abundance of the documents of the medieval Church in England.

The chartularies of four of the Scottish Cathedrals, of certain of the Collegiate Churches, and of many of the great monastic houses, which are accessible, chiefly through the publications of the Bannatyne, Maitland and (old and new) Spalding Clubs, form a great quarry which has yet been but imperfectly worked. It is true that these chartularies are in their main purpose registers of landed possessions, yet the careful student cannot turn over more than a few pages in any part of these valuable records without coming across some interesting illustration of ecclesiastical law or usage. The chartularies do much more than instruct us in the extent of the possessions of particular churches and monasteries, and in questions of land-tenure and local topography. The frequent references to these volumes in the following pages will make clear that hitherto they have been unduly neglected by those who would try to understand ecclesiastical law as practically administered. What Mr. Cosmo Innes wrote as long ago as the year 1861 is, I fear, scarcely, if at all, less true to-day: 'Of the members who receive the Club works, perhaps a dozen of each of the first two (the

writes, 'is perhaps the most important in Scottish history, as it was mainly by his endeavours that Church and State took the form which they retained through the Middle Ages. But the work of David was purely imitative, and it can be understood only by reference to the developments of the other countries of Christendom.'

Bannatyne and Maitland Clubs), it may be twenty of the last (the Spalding Club), turn over the books, cut a few leaves (though that is rather avoided), and then the large quartos sleep undisturbed on the library shelf.' [1]

Since these words of Mr. Cosmo Innes were written fresh sources of information bearing, more or less directly, on our subject have been put at the disposal of the historical inquirer by the publication, from the Vatican and other archives of the papal court, of Theiner's *Vetera Monumenta Hibernorum et Scotorum Historiam illustrantia.* (Romae : 1864), and more recently of the *Calendar of Papal Registers*,—volumes of which are still in process of being issued under the direction of the Master of the Rolls.[2]

In accordance with the exacting, but just demands of the modern spirit of historical research I have wrought almost exclusively from original sources. But it would have been worse than culpable to have neglected the invaluable researches of such students as Joseph Robertson, John Stuart, Cosmo Innes, David Laing, and George Grub.[3]

The purpose and scope of the present Lectures does not allow me to do more than touch lightly the questions connected with the history of the religious houses of Scotland. I am concerned with the Church as represented by the episcopate, the secular clergy (whether of the Cathedral, or Collegiate or Parochial Churches), and the people of Scotland. The relations of the monasteries to the episcopate, and the mode in which the parochial system was affected by the appropriation of parishes to the monasteries will be briefly considered ; but anything like an adequate account of the great religious houses and of the several

[1] *Sketches of Early Scotch History*, p. ix.

[2] This latter work, most valuable as it is, suffers from the process of curtailment necessary, perhaps, for the accomplishment of the design, and also from the rendering of the originals into English, which, though helpful for the rapid scanning of the contents, at times proves unsatisfactory when at some crucial point the *ipsissima verba* are much to be desired.

[3] Unfortunately, the labours of that sound antiquary and honest historian of an earlier age, Father Thomas Innes, of whom one can never think without respect and admiration, scarcely touch the period with which I have had to deal.

'rules' by which the lives of their inmates were ordered must be reserved.

The subject before us, even when thus limited, is of great extent; and I can do no more than sketch in outline the leading features of the constitution of the Church as it affected the secular clergy and the people generally, passing by, reluctantly, many topics of great interest.

J. D.

CHAPTER I

THE FOUNDATION OF THE BISHOPRICS AND OF THE METROPOLITAN SEES

At the time of Malcolm Ceanmore there is only one clearly defined figure of a Scottish bishop presenting itself in the field of authentic history,—he who was known as 'the Bishop of the Scots,' having his seat at Kilrymont (St. Andrews). In earlier days there had been bishops at Glasgow, at Whitherne, at Dunkeld, at Dunblane, and probably at Morthlach. And it would be rash to assert that in the surviving monastic institutions of the ancient Celtic Church there were no monks of the episcopal order at the time of Malcolm. The story of the destruction of the ancient bishoprics at Glasgow and Whitherne, and of the decay of Celtic Christianity in the more northern parts of Scotland does not come within our province. We are here concerned with the period of ecclesiastical reconstruction and extension during the reigns of the sons of Malcolm Ceanmore.

It is a noticeable coincidence that Fothad, the last of the distinctively Celtic Bishops of St. Andrews, died in the same year (1093) as Malcolm Ceanmore. During the wars of the succession immediately following the king's death the see remained vacant. If we may accept the statement in *Scotichronicon*,[1] four persons were successively elected to the see, but all died unconsecrated. It was not till 1109 that Turgot, elected in the first year of King Alexander I., received consecration at the hands

[1] *Johannis de Fordun Scotichronicon cum Supplementis et Continuatione Walteri Boweri.* Goodall's edit. vol. i. pp. 339-340.

of the Archbishop of York. Already Anglo-Norman settlers, many of them men of rank and station, were being granted lands by the Scottish kings. The influence of England both in Church and State was potent at the time. The connexion of the Scottish and English Courts was drawn close by intermarriages. Alexander's sister, 'the good Queen Maud,' was the wife of Henry I. of England, while Alexander had taken to wife a daughter of Henry. It was not unnatural that English models should have presented themselves as attractive both in the civil and ecclesiastical affairs. Independently of this, it is obvious that in those days of awakened religious zeal much difficulty must have been experienced in the efforts of one bishop to administer and govern so great a district as that which included the whole of Scotland, save the region of Cumbria.

It would seem that early in the twelfth century the bishoprics of Dunkeld and Moray were constituted.[1]

About the year 1115 Earl David (afterwards David I.) to whom the sovereignty of Cumbria and of Lothian, south of the Lammermoors, had been bequeathed by his brother, King Eadgar, revived the desolate and plundered bishopric of Glasgow. Perhaps stimulated by David's example, Fergus, Lord of Galloway, who rendered little more than a nominal obedience to Scotland, revived the twice desolated see of Candida Casa. David succeeded to the throne in 1124; and the work of further subdivision of the country into dioceses went forward. About 1128 Ross and Caithness took their places among the Scottish dioceses, and some eight or nine years later Aberdeen was added to the list. The tale was completed (with the exception of Argyll) by David's erection of the sees of Dunblane and Brechin about 1150.

The great district of Argyll had been under the jurisdiction of the Bishops of Dunkeld from the reconstitution of that see till the close of the twelfth century. The separation of this district into a distinct diocese was due (as the chroniclers tell us) to the conscientious scruples

[1] Or, as it must be remembered that in ancient days a bishop had had his residence at Dunkeld, this latter diocese is sometimes spoken of by modern historians as being 'reconstituted.'

of John, Bishop of Dunkeld, who, though surnamed 'the Scot,' was an Englishman. As the story goes, his sense of inability to do justice to the gaelic-speaking people of the western part of his diocese, whose tongue he did not understand, induced him to petition the Pope to sever Argyll from his jurisdiction and bestow it on one who was versed in the tongue of the people.[1]

We see then that with the exception of Argyll all the subdivisions of the vast diocese, if we may use the word, of the 'Bishop of the Scots' were effected during the reigns of Alexander and David. Glasgow was reconstituted, and Galloway, which was then and long after ecclesiastically subject to the Archbishop of York, was within the same period revived as an episcopal see.

If we except the period of the Reformation, the years of the half century which included the reigns of Alexander I. and David I. were more distinctively marked by great ecclesiastical changes than any period in the history of the Scottish Church.

The island dioceses of the Orkneys and the Sudreys (Sodor) were for many centuries unconnected ecclesiastically with Scotland. They owed subjection first to the Archbishop of Hamburg, and afterwards to the Archbishop of Trondhjem (Drontheim), as soon as that see was raised to the metropolitan dignity.[2] Claims to jurisdiction indeed had been made by Scottish Bishops, and, as regards Orkney, by the Archbishop of York. But it was not till the issue of the Papal Bull of 1472, that the separation of the two dioceses from Trondhjem and their subjection to the Scottish Primate finally set at rest all doubts.[3]

[1] On this narrative, it may be observed that though English-speaking people would no doubt be more numerous in the region of Dunkeld, still even there the great majority must have been Gaels.

[2] In the pontificate of Eugenius III. his legate Nicholas (Breakspear) Cardinal Bishop of Albano (afterwards Adrian IV.) visited Norway and erected Nidaros (Trondhjem) into a metropolitan see, under which were placed, as suffragans, the Bishops of the Orkneys and Sudreys. This was between 20 July and September 1161. See Goss's edit. of Munch's edit. of the *Chronicle of Man*, pp. 171, 274-283.

[3] Skene (*Celtic Scotland*, vol. ii.) has bestowed much care on the erection of the bishoprics on the mainland; and Sir Archibald H. Dunbar (*Scottish Kings*) is, as usual, of great weight in questions as to the dates of the several foundations.

We have spoken of the bishopric of Dunblane as erected under King David; and the language is correct in the sense that the erection was with his approval and confirmation. But it may be questioned whether the persons mainly concerned in its establishment were not the Earls of Strathern. Certainly the Earls of Strathern stood in a very peculiar relation to Dunblane. They are spoken of as 'patrons' of the see; and when bishops were confirmed or provided by the Pope, a bull announcing the appointment was addressed to the Earl of Strathern of the time. Nothing like this occurs, I think, in the case of any other Scottish bishopric. But it may be that this distinction took its rise with the splendid munificence towards the see of the third Earl—Gilbert, who succeeded his father in 1171. The story, told in *Scotichronicon* (viii. 73), that Earl Gilbert divided his earldom into three equal parts, retaining one third for himself, and giving to Dunblane and the Austin Canons of Inchaffray, each a third, may be exaggerated, but it has probably some substantial basis in actual fact.[1] When the earldom of Strathern fell to the Crown, James II., in a grant under the Great Seal (Feb. 5, 1442-3), states that the Bishops of Dunblane and his chapter had held divers lands *in capite* of the Earls of Strathern, and the Earls are specially mentioned for their munificent endowments of the see.[2] But the really peculiar feature in regard to the see is the special papal recognition of the Earls of Strathern as *patronus*. It may be observed that even in formal writs the Bishop of Dunblane sometimes appears as 'Bishop of Strathern.'[3]

In one respect, and that of no small importance, the ecclesiastical organisation of the Church of Scotland as established by Alexander and David differed from the

[1] I suspect that the foundation of the story may have been that Earl Gilbert, who had the patronage of many parish churches, gave one third of them to the Cathedral of Dunblane, one third to Inchaffray, and retained the remaining third at his own disposal. See my remarks in *Charters of Inchaffray*, p. xxvi.

[2] *Acts of the Parliaments of Scotland*, ii. 58.

[3] For example Bishop Jonathan (1199-1210) is 'episcopus de stratheren.' *Reg. Priorat. S. Andree*, 319.

organisation of the other countries of Christendom. It possessed no Metropolitan. The bishops of the mainland of Scotland were nine in number—St. Andrews, Dunkeld, Moray, Glasgow, Caithness, Ross, Aberdeen, Dunblane and Brechin.[1] And somewhat later a tenth, Argyll, was added.[2] Yet this hierarchy was acephalous. Elsewhere diocesan bishops were grouped together in Provinces, each Province being presided over by a Metropolitan. It was of old the function of a Metropolitan to investigate the regularity of the elections of the bishops of his Province, and to confirm them if all had been done in due form. The lack of a Metropolitan necessitated that the confirmation of episcopal elections in Scotland should be sought direct from the Roman Pontiff. If disputes arose among the bishops, a Metropolitan held a position which would often enable him to intervene with success. In any case there was the court of the archbishop to which causes might be appealed, and where they might be settled without the trouble and heavy cost that were entailed by carrying the appeal to Rome. In Scotland this advantage was missing. Again, the want of a Metropolitan was experienced when it was attempted in the thirteenth century to hold Provincial Synods in accordance with the statutory provisions of the Fourth Lateran Council. By a special expedient the Pope sanctioned an arrangement (of which we shall have to speak more fully hereafter) by which the bishops were empowered to elect one of their number to convene the Synod and act as a temporary president. Yet though the Scottish Church till the second half of the fifteenth century suffered from these disadvantages, it must be admitted that the Church's most beneficent zeal and highest distinction were attained during the time when it possessed no archbishop; and that some of the ugliest blots upon the Church's credit are associated with prelates who held the dignity of Metropolitan.

It was not due to any wish on the part of the Scots that this anomalous condition of the hierarchy so long remained a feature of the organisation of the Scottish Church. On

[1] Galloway, as then being under the jurisdiction of York, is not reckoned.

[2] About A.D. 1200.

the contrary, as early as the time of King David I. an effort had been made to obtain metropolitan rights for the see of St. Andrews.[1] The king's endeavours were rendered unavailing by the influence of the Archbishop of York, who relied on a compact made in earlier times between his predecessor and Lanfranc, Archbishop of Canterbury, that all Britain north of the Humber *ad extremos Scotiae fines* should belong to the metropolitan jurisdiction of York.[2] Malcolm, the Maiden, renewed the attempt made by his grandfather; and the Pope still declined to grant the request. This refusal, however, was in a measure compensated by the Pope forbidding (1176) the Archbishop of York to exercise metropolitan rights over Scotland until the Apostolic See had tried the question and pronounced judgment. At the same time the Pope forbade the Scottish prelates to acknowledge any ecclesiastical superior other than the Pope himself.

In 1188 Clement III. issued his famous bull, declaring the Scottish Church to be the peculiar daughter (*filia specialis*) of the Roman Church, to which alone (*nullo mediante*) she was to show subjection.

Subsequent efforts made by kings and archbishops of England to secure the subjection of the Scottish Church to England, though often repeated, were ineffective. But it was not till 1472 that Scotland became possessed of a Metropolitan of her own.

The grievance of all appeals from Scottish bishops having to be made to the Apostolic See, with all the delays and heavy expenses consequent thereon, had been in a temporary and partial way met in 1386 by an ordinance of the Anti-Pope Clement VII. Walter Trail had not long been seated in St. Andrews when Clement bestowed upon him powers to hear first appeals. This fact has been brought to light for the first time, so far as

[1] The whole subject of the erection of the archbishoprics has been treated with his usual thoroughness by Joseph Robertson in the Preface to *Statuta Ecclesiae Scoticanae* (vol. i. pp. xxiv, xxv, xxix, and cix-cxxx). The sources for the facts are either cited or referred to; and it has not been thought necessary in this chapter to repeat references which may be found in a work so well known.

[2] Wilkins' *Concilia*, i. 324.

I am aware, by the recent publication of the fourth volume of the *Calendar of Papal Registers* (1902). Trail had petitioned for the redress of the grievance, and the matter is of such interest and importance that it is best to transcribe the main part of the abstract. Clement VII. (Avignon, 15 Kal. March, 1386) to Walter, Bishop of St. Andrews: 'Seeing that all the bishops of Scotland are immediately subject to the Roman Church, that appeal from them must therefore be made immediately to the Apostolic See; seeing moreover that, as his [Walter's] petition contains, such appeals from them and other ordinaries of the realm, and from judges delegate and sub-delegate by papal letters *are frequent, and are attended by delay of justice*, so that suitors sometimes implore remedy from the secular power to the prejudice of ecclesiastical liberty,' Walter is granted power to hear and decide all first appeals, and to cause his decision to be observed, invoking, if necessary, the aid of the secular arm.[1] But this grant was personal to Trail, who was a particular friend of Clement VII.

Patrick Graham, a great-grandson of King Robert III., was Bishop of St. Andrews in 1466. By his representations to the Pope, made by letters, by deputies, and in person, it was at last conceded[2] that his see should be raised to an archbishopric with metropolitan rights over the whole of Scotland, including Galloway, the Sudreys, and Orkney.

The position of Galloway had been for some time uncertain. From the view-point of the state the diocese was unquestionably part of Scotland, its bishops had taken part with other Scottish bishops in acts of state early in the fourteenth century[3] and had been present in Scottish parliaments in the second half of the fourteenth century.[4] In 1430 James I. had by formal writ declared that the bishop, clergy, and tenants of church-lands in Galloway

[1] *Cal. Pap. Reg.* iv. 252.

[2] The bull of Sixtus IV. is dated 17 Aug. 1472. Theiner's *Monumenta*, No. 852.

[3] See *Acts Parl. Scot.* i. 100.

[4] As early at least as 1365; *A.P.S.* i. 138.

were entitled to all the rights and privileges enjoyed by the same classes in other parts of Scotland. Even in matters ecclesiastical the Bishop of Galloway was beginning to have a place. In the Provincial Synod of 1420 the Bishop of Galloway was represented by a proctor.[1] Still it was possible that doubts might be raised as to the ecclesiastical position of that diocese. The bull of 1472 set all doubts at rest. Similarly the ecclesiastical status of Orkney and the Isles (Sudreys) was now definitely determined.

As was only natural, protestations were made against the new arrangement by the Archbishop of York and the Archbishop of Trondhjem.[2] But the most vigorous opposition to the appointment of the Metropolitan was from Scotland itself. The king, who had not been consulted, resented the change. According to Lesley the king's opposition was further stimulated by large gifts of money from the other bishops,[3] while the bishops who were to be the suffragans of St. Andrews were indignant. They had hitherto been subject to the Pope alone. And the place of honorary pre-eminence that attached to the office of the Conservator had from time to time been enjoyed by the occupants of various sees, the Bishop of St. Andrews having no more claim to the appointment than any other of the bishops. Still more important in their view would, doubtless, be the fact that the choice of the Conservator rested with the bishops themselves, that is, with the majority of their own body.

To these objections, which belonged intrinsically to the metropolitan system, was to be added the accidental circumstance that Graham had returned from Rome with the rights of Apostolic Nuncio for the express object of raising a new and hated tax on ecclesiastical revenues for the support of a war against the Turks. Letters and deputations were sent to Rome to move the Pope, if it were yet possible, to alter the tenor of the bull. It is obvious that the remonstrances were not wholly unheeded. In February, 1474, the Pope, at the king's request, limited the jurisdiction of the archbishop in a very important respect.

[1] As were also the absent Bishop of Moray and the Bishop-elect of Ross. *S.E.S.* ii. 77.

[2] See *S.E.S.* i. pp. cxii-cxiv. [3] *De reb. gest.* 305.

Thomas Spence, Bishop of Aberdeen, together with all the 'prelates,'[1] clergy, and subjects of his diocese, was exempted from the jurisdiction of the Archbishop. The exemption, indeed, was to be of effect only during the lifetime of Bishop Spence; but it might, perhaps, be regarded as the first sign of yielding on the Pope's part. So things remained for a time; but the opposition was not wholly allayed. It is no part of our province to tell the strange and pitiful story of the deposition and degradation of Archbishop Graham.[2]

It is, however, within our scope to notice that impending changes were foreshadowed by the Bishop of Glasgow, Robert Blackadder, being granted in 1488 a privilege similar to that which had been enjoyed by the Bishop of Aberdeen. Glasgow was pronounced exempt from all jurisdiction, correction, and visitation of the Metropolitan or his officials. This, it is true, was a privilege granted only during the time of the occupancy of the see by Blackadder. But the reasons assigned for its being granted—the contentions, quarrels and scandals arising from the attempt on the part of the Metropolitan to exercise jurisdiction over the wealthy and powerful diocese of Glasgow, were not of a kind which was likely to disappear.

In the following year (1489) the Three Estates in Parliament declared that the honour and public good of the realm required that the see of Glasgow should be erected into an archbishopric with immunities, honours, and privileges such as those enjoyed by the see of York in the Church of England. Parliament further enacted severe penalties against all who should oppose the measure.[3] This Act was communicated to Rome, and was supported by repeated, vehement, and almost threatening letters from James IV.

[1] The word 'prelates' was frequently applied to the heads of monastic houses, and sometimes to other dignitaries not of episcopal rank.

[2] There can be scarcely a doubt that the sanity of Graham had been seriously affected. The offences laid to his charge are mostly of a kind that can only be explained by supposing his mind to have been unhinged.

[3] *A.P.S.* ii. 213.

On January 9, 1492, less than twenty years after the elevation of St. Andrews to metropolitan rank, Glasgow was erected into an archbishopric with metropolitan rights, to which the sees of Dunkeld, Dunblane, Galloway, and Argyll were annexed as suffragans.[1] These sees were freed from subjection to St. Andrews, at least so long as Blackadder was Archbishop of Glasgow and Scheves was Archbishop of St. Andrews. The tentative and experimental character of the bull has been scarcely noticed by historians. At a subsequent time Dunkeld and Dunblane were restored to St. Andrews. The date of the transfer of the Isles to the province of Glasgow has not yet, so far as I am aware, been fixed.

We have already noticed two instances in which suffragans were exempted by the Pope from the jurisdiction of the Metropolitan. Once again the same anomalous course was followed by the Pope in response to the supplication of the ambitious prelate, Andrew Forman, while he still occupied the see of Moray.[2] In fact, there was evidently no settled policy at Rome; but the Popes seem to have been swayed hither and thither under the varying pressure of circumstance.

The exemption of a suffragan from the jurisdiction of a metropolitan, though highly exceptional, is not without parallels. Thus, in 1331, John XXII. exempted the Bishop of Exeter from the jurisdiction of the Archbishop of Canterbury.[3] And this exemption was confirmed in 1343 by Clement VI.[4] Again, in 1348, Clement granted a like exemption to the Bishop of Lincoln.[5] Thomas de Hatfield, Bishop of Durham, had been exempted from the jurisdiction of York by Clement VI.;[6] and in 1363 Pope Urban V. was petitioned to revoke the exemption on the ground that Thomas feared not the rod of discipline (his diocese being in remote parts, near the Scottish border), and had given himself over to a

[1] The bull of Innocent VIII. is printed in *Registrum Episcopatus Glasguensis*, 472-3, and in Theiner's *Monumenta*, No. 889.

[2] See *S.E.S.* p. cxxv. note. [3] *Cal. Pap. Reg.* (Letters), ii. 354.

[4] *Ibid.* iii. 114. [5] *C.P.R.* (Petitions), i. 137; see also 227.

[6] *C.P.R.* (Letters), iii. 283.

GLASGOW CATHEDRAL FROM THE WEST

By Robert Paul. Drawn in the Academy of the Brothers Foulis.

dissolute life.[1] Hatfield had been specially favoured by Clement VI. In 1345 he was allowed to choose his own consecrator; which, however, was not to create a prejudice to the rights of the Archbishop of York.[2]

The disputes between St. Andrews and Glasgow with respect to the Metropolitan, Primatial, and Legatine jurisdiction of the former, during the occupancy of St. Andrews by James Beaton and his nephew the Cardinal, and the contest as to the right of the Archbishop of St. Andrews to carry his cross in the diocese or province of Glasgow, ending in a scandalous riot in the Cathedral at Glasgow, have been often recorded, and are all described with sufficient fulness in the pages of Joseph Robertson's masterly preface to the *Statuta Ecclesiae Scoticanae*.[3] The last of the Archbishops of Glasgow before the Reformation, James Beaton, the second, was successful in obtaining a bull (dated 26 October, 1552) making the exemption of Glasgow perpetual.

The introduction of the metropolitan system into Scotland, instead of strengthening and consolidating the Church, was the source of continuous and rancorous strife.

We see then that for close upon four hundred years from the death of Malcolm Ceanmore, four hundred years of the most vigorous vitality of the medieval Church in Scotland, the bishops of Scotland had no local superior in the ecclesiastical hierarchy. Each one of them owed no obedience to any other than the Roman Pontiff. The Provincial organisation of the Church under a Metropolitan, or Metropolitans, did not last for more than some eighty years, when the whole fabric of the medieval Church collapsed with a suddenness and a completeness unparalleled in the history of any other country in Europe.

[1] *C.P.R.* (Petitions), i. 472. [2] *C.P.R.* (Letters), iii. 214.

[3] *S.E.S.* i. pp. cxxviii-cxxxiii.

CHAPTER II

THE APPOINTMENT OF BISHOPS IN SCOTLAND DURING THE MEDIEVAL PERIOD

It is not proposed to enter here on the difficult task of investigating the nature of the appointment of Bishops in Scotland during the Celtic period. We are concerned with constitutional questions as they emerged from time to time from the death of Malcolm Ceanmore down to the middle of the sixteenth century, that is, during the period of some four centuries and a half preceding the Reformation.

Some uncertainty exists as to the character of episcopal elections during the transition from Celtic to Anglo-Norman methods of procedure; but after this borderland of debatable ground has been traversed, we find the method of the election of Bishops by the Chapters of their respective Cathedrals well established, and, with certain exceptional cases to be noticed hereafter, holding its recognised place for many years. Gradually, however, by steps which will be traced by-and-by, the rights of the Chapters came to be in fact ignored, and the appointments to bishoprics—and, indeed, to many other ecclesiastical offices of dignity or emolument—were made at the will of the Pope, though ordinarily not without a discreet regard for the wishes of the king, and eventually largely at his nomination.

At the date of Malcolm's death (1093) episcopal jurisdiction was, at least in theory, exercised over the whole of the dominions of the king of Scots by a Bishop, whose seat was at Kilrymont or St. Andrews, and who was

known as 'Episcopus Scottorum.' Indeed, long after the establishment of various dioceses, the Bishop of St. Andrews, though at that time possessing no jurisdiction over any diocese other than his own, still continued to use that ancient and honourable title.[1]

In the first year of the reign of Alexander, son of Malcolm (A.D. 1107), we learn, on the authority of Eadmer, that, 'with the approbation of his *clergy* and *people*,' the king made choice of the English monk, Turgot, Prior of Durham, to fill the vacant bishopric of St. Andrews. On the death of Turgot the see remained vacant for some years. Difficulties of various kinds, chiefly connected with rival claims made by York and by Canterbury to metropolitan jurisdiction over Scotland, which do not concern our immediate inquiry, were the cause of this delay. Eventually Eadmer himself, a monk of Canterbury, to whom we are indebted for most of our information as to these transactions, was appointed, to use his own language, 'eligente eum clero et populo terrae, et concedente rege.'[2]

Want of fuller evidence makes it impossible to understand, with anything like precision, what were the actual facts which Eadmer represented when he wrote of himself as being 'elected by the clergy and people of the land.' It would be hazardous to infer that anything more than an approval of the royal nomination was allowed to the lay people. We may conceive the king suggesting a name in an assembly of his councillors, lay and clerical —the magnates of the kingdom—and the king's nominee being approved by acclamation or otherwise. Such a conception, at all events, falls in better with what seems to have been the usage in England during the later Anglo-Saxon period than any more formal process of election. The question, however, is too much involved in obscurity to allow of a more definite conclusion.

[1] We find the seals of Bishops Robert (1126), Arnold (1158), Richard (1163), Roger (1188), and William de Malvoisin (1202), bearing the legend, EPISCOPVS SCOTTORVM. The seal of William de Lamberton (1298) reads EPI : SCTI : ANDREE, and the expression *Episcopus Scottorum* does not appear, I think, at a later date than that of Malvoisin.

[2] *Hist. Nov.* iv.

The account of the election of Waltheof, Abbat of Melrose, to fill the see of St. Andrews on the death of Bishop Robert (1158) exhibits another trace of a voice, of some kind, being given to the people in the appointment of their Bishops. In Bower's narrative we read of 'the petition of the people, the election of the clergy, and the assent of the princes' concurring in the choice.[1] But, again, the language is too vague to allow us to form a definite conception of what occurred.

Again, in 1174 when Jocelin, Abbat of Melrose, was appointed to the see of Glasgow, it was, according to the *Chronicle of Melrose*, an election 'a clero, a populo exigente, et rege ipso assentiente.' And as late as 1235 we have the same authority for the election of Gilbert to the see of Candida Casa 'by the clergy and people.'

I am disposed to think that the expressions cited above afford an example of the survival of an old technical formula, persisting for a while in a condition of things which the language does not represent with accuracy. Such survivals are familiar in legal phraseology. And in things ecclesiastical we have just seen an example in the survival of the term *Episcopus Scottorum*, as retained for a while by the Bishop of St. Andrews after his jurisdiction was confined to only one diocese out of many. The Bishop of Rome himself was said to be elected by the clergy and people of Rome for some considerable time after the people's voice was, for all practical purposes, silenced. It was not till the latter half of the eleventh century that the Cardinal Bishops took the initiative in the election; and for a period after that time the assent of the clergy and people of Rome was sought, at least in form. Again, language of the same kind as that which we find in the Scottish records may be found in the English chroniclers at a time when practically the appointment to bishoprics resolved itself into a royal nomination.[2]

[1] *Scotichr.* vi. c. 25.

[2] Thus, in the *Historia de statu Ecclesiae Dunelmensis*, by Geoffry, Sacrist of Coldingham, we find that the election of Hugh to the bishopric of Durham in 1153 was 'cleri et populi consensu agnito.' Again, in the continuation of the Chronicle of Florence of Worcester

And certain ancient ecclesiastical *formulae* exhibit the same kind of language. In the formula announcing the election of one of his suffragans to the Archbishop of Canterbury, the letter is addressed to the Metropolitan by 'the clergy and people.' Even in the appointment of the Archbishop himself the 'clergy and people' are said to concur in their *vota*[1] (from 1093 to 1114).

In this connexion I would call attention to the fact that, in some of our early Scottish charters, granting or confirming previous grants of lands and privileges, an expression is to be found that bears a considerable resemblance to some of those which we have been considering. Thus, in the charter granted by David I. to the Church of the Holy Trinity at Dunfermline, he confirms the widely extended possessions of that church, 'with the confirmation and testimony of the Bishops, Earls and Barons of my kingdom,' adding the words 'clero etiam adquiescente et populo' (between 1124 and 1127: *Registrum de Dunfermlyn*).

The same formula will be found in the foundation charter of Holyrood Abbey; and as late as 1154 Malcolm IV. uses similar language in confirming the Abbey of Dunfermline in its possessions.[2]

It seems obvious that in the cases cited the 'assent of the people' must be understood as given in some vague and indefinite manner, if indeed given at all.

The case of the see of St. Andrews is peculiar and exceptional. Whether the community of Keledei settled at that place had, as such, a right to a distinctive voice in the election of the Bishop of that see, it is impossible to say; but the fact that after the establishment of the Priory of Austin Canons at St. Andrews (which came to

(*sub anno* 1139), we read that Maurice was elected 'by the clergy and the people' to the Church of Bangor, and presented to the king by the Bishops Robert, of Hereford, and Sigefrid, of Chichester. 'These made oath that he had been canonically elected . . . and the King confirmed their election.' The 'assent' of the clergy and people is claimed by the same author (*s.a.* 1128) for the appointment by the king of Gilbert, Bishop of London. [Cf. King Stephen's second charter of liberties in 1136, wherein he styles himself 'assensu cleri et populi in regem Anglorum electus.']

[1] *Anglia Sacra*, i. 82. [2] See *Acts Parl. Scot.* vol. i. pp. 358, 363.

serve as the Chapter of the Cathedral of that see) the Keledei were for a long period allowed a voice, together with that of the Cathedral Chapter, in the election of the Bishop, raises a presumption that this concession allowed to the Keledei (if we are not justified in speaking of it rather as a right) had its origin in a recognition of the privileges possessed by that ancient Celtic community in the times preceding the introduction of the Anglo-Norman ecclesiastical system.

One thing is certain; it was not till the year 1273 that the Keledei ceased to be permitted to have a voice in the election of the Bishops of St. Andrews, along with the Canons, who formed the Chapter of the Cathedral. Their right, indeed, was questioned; but as a matter of fact two of their number had (at the request of the king) been allowed to take part in the election of David de Bernham (1239); and two had (also at the instance of the king) taken part in the election of Gamelin (1254) under protest; but Pope Alexander IV. declared that these permitted acts of the Keledei were not to create a prejudice to the rights of the Chapter.[1] The Canons-Regular of St. Augustine were settled at St. Andrews in 1145. Two years later Pope Eugenius III. confirmed the privileges granted them at their establishment, and expressly recognised their right to elect the Bishops of St. Andrews, making no mention of others. Yet it was not till close on one hundred and thirty years later that the Keledei were finally excluded from their privilege of having a voice in the election of the Bishop. On what plea the arrangement, which had lasted for so many years, between the old and new foundations, was brought to an end, we are not informed; but it is plain from Fordun and the documents in Theiner's collection that the Keledei did not submit without a struggle. We find their provost (*prepositus*), William Cumyn, visiting Rome in person in 1297 to prosecute an appeal against their exclusion. The appeal, indeed, met with no success. Yet they still continued to make ineffectual protests at subsequent elections, till in 1332 they seem to have finally abandoned the futile

[1] Theiner, *Monumenta*, p. 67.

contest. In truth, if we accept the authenticity of the bull of Eugenius III., which perhaps there is no good reason to question, it is impossible to doubt that the Canons-Regular had (in view of their rights) been acting a generous part in taking the Keledei into consideration at all. One may regret the extinction of such an ancient community as the Keledei of St. Andrews, but it must be acknowledged that they were not treated with the hasty violence which too often marks the action of bodies of men on whom the powers previously possessed by others had been conferred.

After Cathedral Chapters had been erected, which seems to have everywhere taken place together with the creation of the new Dioceses in the twelfth century, the ordinary and canonical rule to be followed in the appointment of Bishops was that the election lay with the Chapters of the respective Dioceses. The only exceptions, and that only for a time, were the Dioceses of Argyll, and, possibly, Galloway. These two exceptional cases will be noticed hereafter. Permission (*licentia*) to proceed to an election was ordinarily sought and obtained from the king, and his 'assent' was afterwards asked to the result. In all cases the election had to be *confirmed* by the Pope.

The order of procedure for an election by the Chapter was strictly regulated by the Canon Law, and any departure from that order might involve a declaration (when the election was submitted to the Pope for confirmation) that the election 'had not been canonically celebrated,' and was therefore null. The order of procedure may be sufficiently described as follows. A day for the election was fixed; all those who had a legitimate concern in the election were duly summoned. When the day arrived and the electors were gathered together in one place the mass of the Holy Ghost was celebrated, and the aid of God, the Holy Ghost, was solemnly invoked.[1] At this stage three courses were possible. These were very strictly prescribed by the Fourth Council of Lateran, and any departure from the canonical modes

[1] Probably, as at Canterbury, 'per decantationem hymni, "Veni Creator."'

of election was punished by the forfeiture of the right of electing for that turn.[1]

The names given to the three modes of election were (1) election *per scrutinium*, (2) election *per compromissum*, and (3) election *per inspirationem*, or as it was sometimes called, *per viam Spiritus Sancti*. And, as we shall see, examples of all three are to be found in Scottish record.

The order to be followed in the case of an election 'per scrutinium' was that the Chapter, after a general discussion of the question, should choose three trustworthy members of their own body, who were to take the votes of every member of the Chapter one by one. Each vote was given secretly, but was recorded in writing by the three Examiners, or 'Scrutatores,' as they were styled. When the Examiners had counted and compared the votes, they announced the result.

The Canon Law enjoined that he was to be declared elected who had obtained the votes of the 'greater and sounder part' (*major et sanior pars*) of the Chapter. Ordinarily, it was presumed that the *major pars* was also the *pars sanior*.[2] But the words 'et sanior' obviously opened a door for dispute; and examples are to be found where the vote of the majority was set aside as not complying with the requirement thus implied.

The second mode of election, sanctioned by the Canon Law, was by the whole body of the electors committing the choice to certain persons, either of their own body or of outsiders, or to some of their own body, conjoined with one or more outsiders. This mode of election was said to be by arbitration, or, technically, 'per viam com-

[1] See Mansi's edit. of *Labbe and Cossart*, Tom. XXII. col. 1011.

[2] The formula used in Papal briefs when directing one or more Scottish Bishops to make enquiries, before the confirmation of an election, 'de electionis modo, *eligentium studiis*, et electi meritis' seems to point in the direction of weighing as well as counting votes. See Theiner, No. xix. That this was the case we learn from a particularly interesting little treatise written in England in 1254 by Laurence de Somercotes, a Canon of Chichester and Subdeacon of the Pope. This little work has been lately printed by Canon Christopher Wordsworth in his introduction to the *Lincoln Statutes*, Part ii. cxxv.-cxlii. It describes at length the mode of proceeding in the election or postulation of Bishops.

promissi,' and the persons delegated to make the choice were styled 'compromissarii.' It seems to have been a frequent mode of procedure, and we find several examples of it in our Scottish history.

The third mode of election was said to be 'by inspiration.' This expression was made use of when the universal concurrence of the whole body of electors was manifest, and when, without any debate or discussion, the name of some one proposed was accepted by acclamation, and as if by the immediate suggestion of the Divine Spirit (*per viam Spiritus Sancti*).

We shall have occasion to notice examples of each of these various modes of election later on. But it will be of service to explain at this point an expression that we often meet with in our historians. We frequently read of this or that person being *postulated* for a bishopric. This term always implies that there existed some canonical impediment or restriction, which, unless dispensed by the proper authority, barred the person chosen from taking office. Thus, if an ecclesiastic was of illegitimate birth, he could not, according to the Canon Law, be elected to a bishopric. In the case of the choice of the Chapter falling on such, he was not said, technically, to have been 'elected' (for they could 'elect' only one who was 'eligible'); but the Chapter petitioned (or technically 'postulated') the Pope to dispense with the canonical restriction in that particular case. Again, if, as was not uncommon, the choice of the Chapter fell on the Bishop of another see, who had proved his fitness by his administration of another diocese, he could not be 'elected,' but it was necessary to 'postulate' him, that is, to petition the Pope that the man of their choice might be dispensed from the canonical impediment which arose from the tie, which, according to the theory of the Canon Law, bound him to the diocese to which he had been formerly appointed. A bishop was regarded as having been 'married' to his diocese; and it required a dispensation to release him from the bond thus formed.[1] Again, if the choice of the Chapter pointed to a monk, it was necessary to postulate him from his 'superior in religion,' to whom he had vowed obedience.

[1] See Van Espen, *Jus Ecclesiasticum Universum*, Pars I. tit. xv. cap. 6.

Once more, the canonical rule was that no one could be elected to a bishopric who was under thirty years of age. Accordingly, again, there was need of a postulation in the case of the choice of the Chapter falling on one under the canonical age.

Whether by the process of canonical election, or of postulation, an expression was given to the wishes of the Chapter. But in an early period, within the limits we have assigned to ourselves, we find a growing disposition on the part of the Pope to take the appointments to bishoprics and other offices of emolument and influence in Scotland practically into his own hands. We find a growing practice of the Pope 'providing,' as it was technically called, to Scottish bishoprics, that is, appointing to them *proprio motu*, though generally not without regard to the known wishes of the electoral body or of the king. A feeling of resentment at what seemed very much like a usurpation of rights recognised by the common law of the Church is apparent in the language of Walter Bower, Abbat of the monastery of Inchcolm, in the Forth, the continuator of Fordun. Writing of Pope John XXII. conferring the bishopric of St. Andrews (1328) on James Bene, Archdeacon of St. Andrews, before a knowledge of the result of the election by the Chapter had reached Rome, Bower says the Pope seems to have reserved to himself the appointment to all the bishoprics of the world.[1]

As is well known to students of English Constitutional Law, the grievance of Papal 'provisions,' with the consequent interference with the freedom of elections, was keenly felt in England. The outcome was the great Statute of Provisors (25 Edw. III. c. 4), enacted by Parliament in 1351. It was thereby declared that if the Pope collated to any archbishopric, bishopric, dignity, or benefice, to the prejudice of free elections, or presentations, the patronage was to be forfeited to the Crown. And further, any person who had procured a 'provision' from the Pope, to the disturbance of free elections, was to be arrested, together with his procurators and notaries, and

[1] 'Qui quasi omnes episcopatus mundi ad collationem suam reservavit.' *Scotichr.* lib. vi. cap. 45.

imprisoned till he had satisfied the fine imposed by the king.[1] The Statute of Provisors was followed up the next year by an ordinance declaring the purchasers of Papal 'provisions' to be outlaws. In 1390 another Act was passed by Parliament strengthening the earlier statute.

In Scotland, although there were not wanting some instances of courageous resistance to the exercise of legatine powers without the sanction of the king, there was no steady and continuous policy of resistance to Papal 'provisions' and the interference with the freedom of elections. It was not till towards the close of the fifteenth century that we find the Parliament of Scotland (as we shall see) declaring against Papal 'provisions' to benefices which were regarded as belonging to the patronage of the king during the vacancy of a bishopric. But as regards the appointments to bishoprics, it is remarkable how little opposition was made to the claims of Rome. Indeed, the most noteworthy example of resistance to Rome on the part of the Crown in the earlier period was the unhappy case of the attempt of King William to force a nominee of his own on the Chapter of St. Andrews after the free election by them of another. In this case the Pope, Alexander III., who had vigorously supported Becket in his contest with Henry II., acted a similar part in his support of John the Scot, the elect of St. Andrews. And in this case it was the king, and not the Pope, who opposed the free election of the Chapter.

Before proceeding to illustrate the general principles with respect to the appointment to bishoprics by the examination of particular examples, it will be well to say something of the Papal 'confirmation' required before any election could be effective. After a choice had been made by the Chapter, two or three of its members were commonly despatched to Rome, bearing the writ, or, as it was technically styled, 'the decree,' reporting the election, or, in the case of a postulation, a request together with a declaration setting forth in express terms the nature of the impediments to a canonical election, such as 'defect of birth,' occupation of another bishopric, or anything else

[1] The person who had obtained such a writ of appointment from the Pope was styled in England a 'provisor.'

that required dispensation. If any persons were disposed to raise any objection, whether on account of alleged irregularity in the procedure or the alleged unfitness of the person elected or postulated, they too had to appear at Rome, either in person or by duly authenticated procurators. After a preliminary examination of the documents, ordinarily committed to some members of the College of Cardinals, it was not uncommon in the earlier period for the Pope to remit to three Scottish Bishops[1] to investigate on the spot whether the procedure of the election had been canonical, and whether the elect was fit (*idoneus*). If all proved satisfactory, the Bishop-elect was then required to subscribe the oath of fealty to the Pope. If the later stages of the inquiry were conducted in Scotland, the three Bishops were authorised, if satisfied, to confirm the election 'in the name of the Pope,' and directed to provide that the elect should be duly consecrated.

When the Pope refused to confirm an election, it was not the practice to state the reason, except in very general terms, as, for example, that the election had 'not been canonically celebrated'; and from this decision there was, of course, no appeal. As it was not uncommon for the Pope in such cases to claim the right of appointment, there was, to say the least, a strong temptation to find some technical irregularity in the procedure.

We are now in a position to understand the actual cases which I am about to cite, taken from the records preserved in the Vatican, and made known to the world through Theiner's *Monumenta*.

From the time of the establishment of the several Cathedral Chapters down to the Reformation we can distinguish two periods, though not marked off with exact precision from one another, in respect to the appointment of Bishops. An analysis of the Papal bulls relating to the appointment of the Scottish Bishops shows us that from the year 1218, which is the date of the first of the bulls in Theiner's collection, down to the close of

[1] In 1218 Honorius III. committed to the Bishop of St. Andrews alone to inquire as to the regularity of the election, and the fitness of Gregory, Bishop-elect of Brechin, and if satisfied, to confirm the election 'auctoritate nostra,' Theiner, No. xix.

the pontificate of Clement V. (1314) the elections, or postulations, of Bishops made by the Cathedral Chapters were respected at Rome, and ordinarily confirmed, or given effect to. Nor is there any reason to doubt that previous to 1218, from the time of the erection of the Chapters, the same system, which represented the Common Law of the Church, generally prevailed. But a new era may be said to begin with John XXII. (1316).[1] From that time, with rare exceptions, the Popes claimed to have 'reserved' to their own appointment, or 'provision,' as it was styled, all the bishoprics, and indeed, one may add, all elective offices and dignities of value, such as deaneries and the headships of the monastic houses. This was a great revolution. In England it was met, as has been observed, by such enactments as the several Statutes of Provisors. On the Continent, also, there was much discontent; and what was regarded as the Papal usurpation of ecclesiastical patronage formed a constant ground of angry complaint. Among the many loud demands for ecclesiastical reform, which rang through the nations of Europe towards the close of the fourteenth century, the cry for the restoration of the freedom of election was one of the most distinctly formulated. At the Council of Constance (1414-1415) several prelates, more particularly those from France, protested against the manner in which the right of election had been abrogated by the system of Papal 'reservations and provisions.' In Scotland, however, I cannot detect till towards the close of the fifteenth century more than some rather indistinct murmurings. And I think one can offer a reasonable conjecture why discontent did not reach a very acute stage. Whether it was due to the lessons taught by the vigorous action of the State in England, or to some other cause, the Pope, while technically holding capitular elections, in the case of 'reserved' sees, to be null and void, nevertheless, as a rule, appointed, as it were *proprio motu*, the person on whom the Cathedral Chapter had (invalidly, according to the Papal judgment) fixed their choice. For it is curious and interesting to find the

[1] There are a few cases of direct Papal appointment previous to the accession of John XXII. After the death of John XXII. his successor, Benedict XII., confirmed a few canonical elections.

Chapters continuing to go through the process of election, with all its formalities strictly observed. Again and again, long after the system of Papal 'reservations' had been well established, we find the Papal briefs assuming that the elections were made in ignorance of the reservations which the Pope had made. On the ground of ignorance of the fact that he had 'reserved the see to his own disposal,' that is, had resolved himself to provide his own nominee for the bishopric at the next vacancy, the Pope condones the offence of the Chapter, and of the elect, who had assented to the election, and proceeds, as it were of his own motion, to appoint the very person whom the Chapter had chosen. Although the election was declared null and void, the electors, at all events in Scotland, were ordinarily granted to have as their Bishop the person whom they had chosen. In theory the rights of the Chapters were set at nought; in actual fact their choice was generally made good. Hence, we may conjecture, they felt little disposition to enter on what might prove a vexatious and fruitless controversy.

After 1371 the documents in Theiner's *Monumenta* fail us as regards the appointment to bishoprics. But it would seem from Fordun—or, to be accurate, his continuator Bower—that the Pope from time to time made appointments where no election had been attempted. Indeed we find that although Gilbert Greenlaw, Bishop of Aberdeen, was postulated to St. Andrews, Henry Wardlaw is made Bishop of St. Andrews 'ex provisione domini Benedicti XIII.' Wardlaw's successor, Kennedy, was elected, we are told, 'by the way of the Holy Spirit,' or 'by inspiration' (an expression already explained). But before the decree of the election reached the Pope, he had himself 'provided' Kennedy to St. Andrews.

The exact nature of the appointment, towards the close of our period, of James Stewart, Duke of Ross, second son of King James III. and Margaret of Denmark, to the metropolitan see of St. Andrews in 1497, is not apparent. It was certainly at the instance of the king, though I am unaware whether the *form* of postulation by the Chapter was gone through. But whether it was or was not, the Pope would no doubt assert his claim to appoint. As the

Archbishop was only a youth, much below the canonical age at the date of his appointment, it was necessary that he should receive a dispensation from the Pope to hold even the revenues of the see as administrator. He was never consecrated. The successor of this prelate, Alexander Stewart, natural son of James IV., was appointed by Papal provision. Two dispensations were necessary in his case—one on the ground of bastardy, and the other on the ground of his not having reached the canonical age, for he was only a boy. It will be remembered that Alexander Stewart, though commonly styled 'Archbishop,' was appointed by the Pope only as 'administrator' of the archbishopric till he reached the age of 27, when he was to be provided in the fullest manner to the see. He fell at Flodden several years before the time designed for his consecration. Long before the Popes had assumed the right of appointing to bishoprics in general, they had asserted their right to provide to the principal metropolitan sees.

We may now revert to the earlier period, when the Common Law of the Church had not yet been very seriously invaded by the system of provisions, and examine the actual practice of the Scottish Church in the matter of Episcopal elections.

In the early period I have observed only one example of an election 'by inspiration.' This was the case of Andrew, a Dominican friar, whose election to the see of Argyll was confirmed by Boniface VIII. in 1298. The popularity of any one among the members of the electoral body must of necessity have been very marked when, without any discussion (for this was essential, according to the Canonists), a general cry was raised on his behalf, and no dissentient uttered his voice.[1] Of this Andrew, so elected, we know nothing. But in the case of Bishop Kennedy, of St. Andrews, in the second period, of whom it is also said that he was elected 'by inspiration,' one knows enough of his merits to mitigate our surprise.[2]

[1] Absolute silence (for silence gives consent) on the part of the assembled Chapter after a name had been proposed was taken for assent, as in the case of the election to Norwich in 1406.

[2] As the elections to the headships of religious houses were conducted on the same principles, we may cite, by way of illustration, the process

Of the other elections of Bishops during the early period, we find a very few conducted 'per scrutinium,' that is, by a poll of the whole body of electors. The great majority followed the method already described and known as 'per compromissum.' A disputed election carried on among members of the same community, living, many of them, within the same Cathedral close, or even, as in the case of St. Andrews and Whitherne, within the same building, if we know anything of human nature, must have often gendered a very unedifying strife. It could not fail to mitigate the evil when the electors were willing to delegate the right of choice to a few persons whom they all agreed in trusting.[1] At any rate, the method of electing 'by compromise' was the favourite mode of proceeding. In 1239 the Chapter of Aberdeen conferred the power of choosing for them on four of the canons and three of the city clergy, who elected the Abbat of Arbroath.[2] In the same year the Chapter of St. Andrews appointed the Prior and four of the canons to make choice of the Bishop. They selected David de Bernham. The

of election in the case of the choice of the Prioress of the Cistercian nuns of Coldstream in 1538. After due citation of all the nuns, and after the mass 'de Sancto Spiritu' had been said, the sisters, eleven in number, assembled in the Chapter-house at the sound of the bell. The hymn, *Veni Creator Spiritus*, was sung by the sisters on their knees, and then without any discussion, and with one voice, and 'as we firmly believe by divine inspiration and by the grace of the Holy Spirit,' Jonet Hoppringill was chosen.—*Chartulary of the Cistercian Priory of Coldstream*, pp. 83–87. For a detailed account of the election *per viam Spiritus Sancti* of the Abbat of Cambuskenneth in 1336, see the *Chartulary* of that abbey, No. 98. The account closely resembles that of the election of the Prioress of Coldstream.

[1] In the case of an election by the monks to the office of Abbat of Arbroath, we find the electors (who were divided in opinion) at length, on the advice of the Archbishop, agreeing to confer the power of choice on a *single* 'compromissarius' the Prior of Fyvie. This was in 1483. *Lib. de S. Thom. de Arbr.* ii. 209.

[2] In this, and other examples, it will be observed that the referees to whom the power of electing was delegated were of an uneven number—doubtless to avoid the hitch that might arise from each of two names obtaining equal votes. In *Regiam Majestatem* (lib. ii. c. 5), dealing with arbitrators in civil affairs, we read (with a reference to Virgil's 'Numero Deus impare gaudet,' *Eclog.* 8): 'Debet autem compromitti in numerum imparem, quo numero Deus gaudet, scilicet in unum, aut in tres, et sic, de similibus'; after which the practical reason is assigned.

Chapter of Brechin followed the same course in 1245, delegating their rights to three of their number. The electoral body could determine, when appointing their referees, delegates or *compromissarii*, as they were technically styled, whether the choice which they promised to ratify should be made unanimously by the delegates, or whether they would accept as Bishop one who was chosen only by a majority of voices. In 1255 the Chapter of St. Andrews appointed nine of their own number as delegates or referees, declaring that they would accept as Bishop whoever might be chosen either by the whole of the referees or by the majority. In 1274 the Chapter of Moray chose, as *compromissarii*, the Dean and the Treasurer of the Cathedral, together with an outsider, a canon of Caithness. In 1279 the Chapter of St. Andrews appointed the Prior, seven canons, and the Archdeacon of St. Andrews (who apparently was not a member of the Chapter) to make their choice. In the case of the election of Matthew de Crambeth to Dunkeld (1288), the Chapter appointed from their own body only the Dean and one canon, the other *compromissarii* being the Dean of Aberdeen, the Archdeacon of St. Andrews, and the Archdeacon of Teviotdale. As the choice of the *compromissarii* by the Chapter had to be absolutely unanimous, it would seem as if in this case there was much mistrust of one another among the members of the Chapter, since they actually chose a majority of their *compromissarii* from the clergy of other dioceses. This case is also interesting from the fact that the election resulted in the choice of one of the *compromissarii*, the Dean of Aberdeen, who was unanimously chosen by the other four referees.

Sometimes, in what may be called 'the terms of the reference,' it is *expressly* allowed to the referees to choose one of their own number. Thus, at the election (1296), 'by compromise,' of Alpin, a canon of Dunblane, to the Episcopal throne of that diocese, it was expressly stated that the *compromissarii* might make their choice either *de gremio ejusdem ecclesiae*, *i.e.* from among the members of the capitular body of Dunblane, or from among their own number.[1]

[1] Incidentally, the record of this transaction brings to our knowledge that the Abbats of Arbroath and Cambuskenneth were canons of

In this case the number of referees was nine, and included the four 'principales personae' of the Cathedral, the Dean, the Precentor, the Chancellor, and the Treasurer. At the election to Brechin (confirmed in 1298) the *compromissarii* were five in number, and the terms of reference were the same as in the case last mentioned.[1] In the same year the Chapter of St. Andrews, when appointing referees to elect to the vacant bishopric, made no such restriction as to the field from which choice was to be made; they granted 'potestatem plenam et liberam.' And the choice fell on William de Lamberton, who was at the time Chancellor of the Cathedral Church of Glasgow.[2] In 1308 the Chapter of Dunblane again limited the choice of the referees, or *compromissarii*, to the members of the capitular body, expressly including the referees themselves, who on that occasion were all members of the Chapter. The choice fell on one of the referees.[3] In at least two instances of election to the see of Glasgow (as we learn from the confirmations of 1337 and 1339) the Chapter of the Cathedral followed a similar plan to Dunblane as regards the limitation of the field of choice.[4]

Enough, perhaps, has now been said to make intelligible the method of election *per viam compromissi*. We may turn to examine a few cases of election *per viam scrutinii*, or by taking the votes of the whole capitular body.

In 1299 the Chapter of Moray proceeded to an election of a Bishop *per scrutinium*. The examiners (*scrutatores*), according to what was probably the usual order, first recorded their own votes, and then took one by one, and secretly, the votes of the other members of the Chapter. The result was that thirteen votes were found to have

Dunblane by right of their office; and that the Abbat of Inchaffray (*Insula Missarum*) was Precentor of Dunblane, *ex officio*. Theiner, No. cccIv.

[1] Theiner, No. cccIxi.

[2] Theiner, No. cccIxii.

[3] Theiner, No. cccIxxxvi.

[4] Theiner, Nos. dxl. and dxliii. It is worth observing that the first of these informs us of a Bishop of Glasgow, John, not recorded by Keith in his *Catalogue*. He succeeded John de Lindsay. See *Scottish Historical Review*, vol. v. p. 206.

been given to David, one of the canons of the Cathedral, four to the Dean, one to the Archdeacon, and three to the Chancellor. The Pope, when besought to confirm the election of David, alleged that there was a defect in the procedure, but the nature of the defect is not stated. According to a practice that came to be not uncommon, the Pope thereupon himself appointed David 'by the plenitude of the apostolic power,' on the plausible ground that he was desirous of saving the Church of Moray from the danger and loss that always attended a prolonged vacancy in an episcopal see.

A contested election, conducted *per scrutinium*, took place at Dunblane in 1301. Several names appear to have secured votes, and among them that of Nicholas, Abbat of the Benedictine Monastery of Arbroath. Nicholas thereupon proceeded to Rome, and sought confirmation of his election. None, however, of the others who had received votes, though long expected, made any appearance either in person or by their proctors. Under these circumstances a plan was followed, which was often adopted when doubts were raised as to the validity of an election—Nicholas resigned into the hands of the Pope any claims he might have to the bishopric, and was at once promoted to the see 'de apostolicae plenitudine potestatis.' It is easy to understand why election by compromise was generally preferred ; and it seems to me probable that the number of elections *per scrutinium* would have been even fewer than they were but for the rule that absolute unanimity was required in the choice of the delegates to whom the power of election was to be transferred in an election *per viam compromissi.* Even one 'crank' among the members of the capitular body would be sufficient to force on an election by means of a poll of every elector.

In the case of undisputed elections, immediately upon the announcement being made of the result, the elect, if present, was borne up to the great altar of the church and the *Te Deum* was sung. After this the person elected was required within one calendar month to say whether he assented or not to take office. It is common to find it said that the elect was reluctant, and only overcome

by earnest intreaty. *Nolo episcopari* was the becoming attitude.

The fact that no metropolitan jurisdiction was exercised in Scotland until the year 1472, when the see of St. Andrews was raised to archiepiscopal and metropolitan dignity, will account for the constant recourse to Rome for the confirmation of elections during the earlier part of the period with which we are dealing. In England, and all other countries where metropolitans had been established, it was to the metropolitan of each ecclesiastical province that the confirmation of episcopal elections within that province pertained. This was acknowledged by all canonists to be the Common Law of the Church. It is explicitly stated in the Decretals of Gregory IX., embodied in the *Corpus Juris Canonici.* In other countries it was not till about the time when the Popes, in effect, abolished capitular elections by the system of 'reservations' and 'provisions,' that they began to insist on confirmation being sought from them, and not from the metropolitans.[1] But in Scotland the Pope was, up to 1472, the immediate superior of the Bishops; and accordingly recourse to Rome for confirmation was well established long before it became a necessity in England.

By the time that Scotland possessed a metropolitan the appointment by Papal 'provision' was the rule. Hence we do not find, so far as I can recollect, any example of a Scottish metropolitan being called on to confirm an episcopal election. If there are examples, they must be few.

I have now to call attention to two remarkable cases. In the narrative of the election that took place at Aberdeen on the death of Bishop Gilbert Sterline, as recounted in the brief of Pope Gregory IX., dated 17th June, 1239,[2] we read that 'the clergy of the city of Aberdeen were convoked'; and we have already seen that of the seven delegates on whom the power of electing was conferred four were members of the Chapter, and three were from among the city clergy. Of course, it is possible that in this case

[1] See Van Espen, Part I. tit. xiv. cap. 1. It was obviously foreign to the notion of the Pope's supremacy that a bishop provided by him should have to seek confirmation from a metropolitan.

[2] Theiner, No. xcix.

there were some exceptional reasons for the course pursued; but, on the other hand, what occurred may point to some definite arrangement like that which so long continued between the Chapter and the Keledei of St. Andrews. I have not, however, observed any subsequent reference to the association of the city clergy with the Chapter of Aberdeen in the election of Bishops.

The case of Argyll is somewhat obscure. In earlier days election by the Dean and Chapter is distinctly mentioned, as may be seen by the Papal letter appointing Andrew to that see in 1299.[1] But in December, 1344, Clement VI., in a brief appointing a Dominican friar named Martin, relates that in the time of his predecessor, Benedict XII., a certain Angus Congall had appeared at the Papal court, laying claim to the bishopric of Argyll on the ground that he had been canonically elected by the clergy of the 'city and diocese of Argyll,' adding that to them, together with the Chapter, 'according to an ancient and approved custom,' the right of election pertained. It was judged that the statement of Congall was not true. But it does not appear whether it was the allegation that he had been canonically elected, or the statement as to the 'ancient and approved custom,' that was discredited. It seems improbable that Congall would have made a statement, so easy of refutation by the other claimant, had there not been some foundation for the peculiar mode of election to which he referred. Just ten years after we find, as it were, by mere accident, a curious confirmation of the truth of the statement of Congall. Among the transactions relating to the raising of the money required for the ransom of David II., there is a procuratory signed by several of the Scottish Bishops, who attached to their signatures not only their episcopal seals, but also the seals of their Chapters. The Bishop of Argyll appends only his episcopal seal; and the note is added, 'non habet commune sigillum, quia totus clerus eligit.'[2]

A case somewhat similar to that of Argyll will be found in the Irish diocese of Connor in Ireland, where, in 1390,

[1] Theiner, No. cccIxviii.

[2] *Acts Parl.* i. p. 18. See the whole account in Theiner, No. dlxiv.

the clergy of the 'city and diocese,' according to custom, elected the Bishop, there being no Chapter.[1]

At this point it may be well to give a few examples of 'postulations' to Scottish sees. Postulations of bishops from one see to another are so frequent that it is unnecessary to cite illustrations. But some examples may be given of postulations rendered necessary by 'defect of birth,' or the illegitimacy, of the person chosen. In 1236 Geoffrey, one of the king's clerks, was chosen *per compromissum* to the bishopric of Dunkeld; but he had to be postulated, because he had been born out of wedlock.[2] Peter de Ramsay was postulated to Aberdeen in 1247: his father was a clerk in minor orders and his mother an unmarried woman.[3] In 1245 the Chapter of Brechin postulated Albin, precentor of that Cathedral, for their Bishop although he had been '*de soluto genitus et soluta*.'[4]

In 1247 Henry, Canon of Orkney, was postulated to that see; and he was dispensed by the Pope of illegitimacy.[5]

In 1248 Abel, Canon of Glasgow, obtained from the Pope a dispensation to be ordained priest and elected Bishop, though he was the son of a priest.[6] This presumably was the Master Abel who obtained the see of St. Andrews in 1254.[7]

Gamelin, Archdeacon of St. Andrews, and Chancellor of Scotland, *ex soluto genitus et soluta*, was postulated to the bishopric in 1254.[8] It may suffice to mention one other instance. The good Bishop Elphinstone of Aberdeen had in the strict sense of the word been 'ineligible' for a bishopric, for his father was a priest and his mother an unmarried woman. The express statement of the Pope's letter[9] disposes of the good-natured notion put forward by Keith and Crawford, that the Bishop was the child of

[1] *Calendar of Papal Registers*, iv. 336.

[2] Theiner, p. 33. [3] Theiner, p. 47.

[4] Theiner, No. cxvi. This document enables us to date Albin's appointment two years earlier than the date assigned to it in the Preface to *Registrum Brechinense*, p. vii.

[5] *C.P.R.* (Letters), i. 241. [6] *C.P.R.* (Letters), i. 244.

[7] *Ibid.* 297. [8] Theiner, No. clxi. [9] Theiner, No. dcccxcv.

a marriage which had been terminated by the death of his mother before his father entered into Holy Orders.[1]

Attention has now to be called to a peculiar case of dispute connected with the election preceding the consecration of Bishop Gilbert to the see of Galloway (Candida Casa) in 1235. The bishopric, it will be remembered, was at this time a suffragan see of York. The information we possess on the subject is derived from The Register, or Rolls, of Walter Gray, Lord Archbishop of York (*Surtees Society*, 1872), and from an account of the transaction given in the *Chronicle of Melrose* (*sub anno* 1235).

The Chronicle gives the following narrative: 'W., Bishop of Whitherne, died; and on the first Sunday in Lent, Gilbert, Master of the novices at Melrose, and formerly Abbat of Glenluce, was elected Bishop as well by the clergy as by the entire people of Galloway, with the exception of the Prior and Convent of Whitherne. But upon the Sunday on which is sung "Occuli mei"[2] the said Prior and Convent elected Odo, formerly Abbat of Dercongal,[3] accompanied by whom they forthwith repaired to Walter de Gray, Archbishop of York, demanding from him consecration of the elect. They did not, however, prevail, for he had heard of the former election. Having listened to the pleadings on both sides, he rejected Odo, and consecrated the aforesaid Gilbert, monk of Melrose, to be Bishop, in the Cathedral Church of York, on the Sunday next before the Nativity of Blessed Mary.'[4]

This very curious narrative receives some explanation, though by no means all that we could wish, from documents printed by the Surtees Society. The election of Odo by the Chapter of the Convent of Whitherne, if

[1] The rule as to defect of birth (*defectus natalium*) applied equally to the heads of monasteries. For this cause, Richard, a monk of Kelso, who was chosen abbat by the community in 1253, had to be postulated. Theiner, No. clviii.

[2] These words are the opening words of the Introit at Mass on the third Sunday in Lent.

[3] That is, Holywood, *monasterium sacri nemoris*, in Dumfriesshire, which, like Whitherne, was a convent of Premonstratensians.

[4] The Feast of the Nativity of the Virgin is Sept. 8.

celebrated with the license of the king (Alexander II.), was certainly in its result opposed to his wishes, and failed to receive his assent. The king intimates to the Archbishop of York that an appeal to Rome would probably follow on confirmation being given to the person elected by the Convent. The Convent had, it is well to observe, in their communication with the Archbishop, asserted that they had had the king's consent. Here was a plain issue as to a matter of fact. But the curious feature of the affair is that an election by the clergy of the diocese, excepting the very persons to whom presumably the right of election exclusively pertained, should be accepted as canonical and valid. The king in a letter to the Archdeacon and clergy assents to the election of Gilbert, 'because it was manifest to us that the election was canonically celebrated.' And the Archbishop of York would scarcely have ventured to confirm the election, even to oblige the king, had there not been some foundation for the claim made by the diocesan clergy. It may be noticed that in the correspondence preserved at York there is no allusion to the people having had any say in the matter. The question was between the Convent on the one hand and the diocesan clergy on the other. I take it that the statement of the Chronicle of Melrose as to Gilbert being elected, or chosen, by the people as well as the clergy represents no more than a generally, and perhaps vaguely, expressed desire on behalf of the lay people, such as seems to have been manifested in some cases already mentioned. The dispute perhaps originated in the rival claims of the king and the Lord of Galloway 'super patronatu.'[1]

It has been recently brought to light that the question of the canonical character of these two elections to Galloway was in dispute for several years; for as late as June, 1241, the Pope committed to certain Irish ecclesiastics (the Bishops of Raphoe and Rathlure and the Archdeacon of Raphoe) to investigate the two elections, and, if they found that Odo had been canonically elected, they were to compel Gilbert to restore all he had received from the

[1] See *Lanercost*, p. 62.

BISHOP ELPHINSTONE.

Born circa 1431. *Died* 1514. *From oil painting in the University of Aberdeen.*

see of Whitherne. If both elections proved uncanonical, they were to cause a fresh election to be made.[1] The Prior and Convent of Whitherne had obviously refused to submit tamely to the king, and had appealed to Rome. The reference of the dispute to Irish ecclesiastics was probably to secure impartiality by appointing disinterested judges.

[1] *Cal. Pap. Reg.* vol. i. 198.

CHAPTER III

THE SCOTTISH CROWN AND THE EPISCOPATE IN THE MEDIEVAL PERIOD

We shall first say something of *Investiture*. At the opening of the period with which we are dealing we have in Scotland an echo, though only a faint and feeble echo, of the angry voices heard in England and on the continent of Europe with regard to the investiture of bishops by the king. In the language of feudal law to *invest* is to give actual possession, whether of the rights of property or of the rights of office. Investiture was ordinarily effected by the delivery of some symbol, such as the delivery of a turf, or a branch, or stick, in the conveyance of land, or, in the conveyance of the rights of office, by the delivery of some object commonly symbolical of office.

It had been the practice of monarchs to convey to bishops the rights of exercising jurisdiction within their dominions by the delivery of a ring and a pastoral staff. But there grew up in the minds of some ecclesiastics, towards the close of the eleventh century, the fear that the acceptance of such symbols from the secular power might be understood as implying that the spiritual powers of the episcopate were derived from man rather than from a higher authority. The ring, indeed, as merely a symbol of dignity, and not infrequently used in the investiture of laymen, was less open to objection than the delivery of the pastoral staff or crozier.[1] But even the delivery of

[1] For the use of a ring in the investiture of Sir James Douglas in all his lands in free regality by Robert the Bruce, see Cosmo Innes, *Scotch Legal Antiquities*, 88. In 1500 Andrew, Bishop of Moray, invested

the ring was capable of being understood in a sense inimical to ecclesiastical principles. The ring was regarded, in the case of its use by bishops, as symbolizing the *marriage* (*conjugium spirituale*), as it was styled, of the bishop to his diocese. The union of a bishop to his diocese was regarded as close, and as indissoluble without a special dispensation from the Pope. And in the ecclesiastical language of the time, when a bishop died his church was said to be 'widowed.' The pastoral staff, however, was obviously symbolical of the bishop's spiritual office as shepherd of his flock. Was it right then, they argued, that these emblems of a spiritual office should be conveyed by the hands of a layman, however exalted his station and dignity? These thoughts had been for some time exercising the minds of the clergy when they were laid hold of by the most masterful man of his time in Western Christendom. Hildebrand, afterwards known as Gregory VII., was without any doubts as to the impossibility of tolerating the lay investiture. With the precision, definiteness, and force of a keen intellect and a resolute will he pressed his objection in season and out of season. His efforts met for a time with a varying success, but in the end he attained an almost complete triumph.

One need not here refer to the struggle as it was carried on in England. For our purpose it is enough to observe that, when Eadmer was elected to the bishopric of St. Andrews in the reign of Alexander I., the English king had already given way on the question of investiture *per annulum et baculum pastoralem*. In Scotland, however, there was still to be a feeble effort on the part of the king to assert his claim. Eadmer consented to a compromise. He received the ring from the hand of Alexander; but he was quite firm in respect to the reception of the pastoral staff. This he declined to receive from the king, and he himself took that symbol of office from off the altar on

Dougal, son of Roderic, as Prior of Beauly in Ross-shire by placing on his finger his (the bishop's) ring (*The Charters of the Priory of Beauly*, p. 114). And the ordinary parish priest was commonly *invested* by the bishop of the diocese in the spiritual charge of his parish by placing the bishop's ring on his finger, while he was afterwards *inducted* into corporal possession of the church by the Dean of Christianity, on a mandate from the bishop.

which it had been previously placed. As has been explained, the delivery of a ring being often used in the investiture of lay feudatories of the Crown, Eadmer might, without any strain on his conscience, accept the ring as a symbol of his investiture in the temporalities of the see.

Archbishop Anselm, the intimate friend and companion of Eadmer, had, after a long contest, come to an agreement (1107) with Henry I. of England. There was to be no investiture by ring and staff, but the bishops of the Church of England were to do homage on their appointment to their sees. They thus acknowledged that they were subjects, and acknowledged the king as feudal superior. This was all that Henry really sought, and so the struggle was brought to a close.

The relations of the Scottish and English Courts were at the time close and intimate. Henry's first wife was sister of Alexander, and Alexander was married to Sibilla, a natural daughter of Henry. There can be little doubt that the policy of Henry towards the Church was eventually, though slowly, reflected in the policy of Alexander. At any rate, after the time of Eadmer we hear little more of troubles in Scotland with respect to investiture.

It would not, however, be proper to omit reference to a rather puzzling letter of Pope Gregory (doubtless Gregory IX.) which appears in *Registrum Episcopatus Moraviensis* (No. 78). It is addressed to the Dean and Chapter of Moray, and is in reply to their complaints as to their liberties being infringed or in danger of being infringed. The Pope strictly prohibits anyone from presuming to impede the free and canonical election of a bishop when the see is void, and also prohibits the Dean and Chapter from conveying the pastoral staff and other pontifical *insignia* to a secular court, to be afterwards received therefrom, 'since what is spiritual ought not to be given (*exhiberi*) by the secular power.' The date is 'Lateran, Ides of April in the fifth year of our pontificate.' If Gregory IX. is the author of the letter (and it is practically impossible that it could be any other) the year is 1231 ; and it may be added that in that year Gregory IX. was at the Lateran in April.[1] But what is perplexing is the fact, as it seems, that the

[1] See Mas Latrie, *Trésor de Chronologie*, col. 1116.

KING JAMES I.

Scottish National Portrait Gallery.

see of Moray was not void at this date. Andrew of Moravia seems to have succeeded to the bishopric in 1222, and died late in 1242.[1] We must not be tempted into the field of conjecture to explain the difficulty here presented. It must suffice for our purpose to note that some time not long previous to 1231 the Chapter of Moray feared an interference with the freedom of election, and that pressure had been put upon them to convey the pastoral staff *et alia insignia pontificalia* to a secular court, to be received again therefrom.

Passing now from questions as to *Investiture* we go to consider the influence of the Crown on the *appointment* of the bishops.

Not only did Henry I. of England abandon his claim to the investiture of the bishops, but he also conceded that for the future he would not appoint to bishoprics independently of the Chapters. In actual practice, however, the English king exercised at first a dominating and always a powerful control over episcopal appointments. The Chapters at first were required to meet for the election in the Chapel Royal, and in the presence of the king's Justiciar. After a time it came to be recognised that the Chapter should not proceed to an election until they had received the king's license (*congé d'élire*), and, moreover, after the election the king's 'assent' to the choice made had to be obtained.

I cannot remember having come across absolutely conclusive evidence that the early Scottish kings required Chapters to hold the elections of bishops at the royal court. But one cannot but suspect that the departure from the usual practice of holding the elections in the chapter-houses of the respective Cathedrals exhibited in the three following cases (to which I have never seen attention called) was with a view to influencing the action of the electoral body. The *Chronicle of Melrose* records that in 1195 'Gregory, Bishop of Rosemarkin, died, and Reinald, monk of Melrose, was elected his successor upon the third of the Kalends of March, being the second day of the week, at Dunfermline.' That a bishop of the remote diocese of Ross should be elected at Dunfermline

[1] *Chronica de Mailros.*

looks very significant. The second case is that of the postulation, in 1202, of William of Malvoisine to the see of St. Andrews, which, according to *Scotichronicon*,[1] was celebrated at Scone. Dunfermline and Scone were each a royal residence. The third case is the election of Jocelin to Glasgow in 1174, which took place at Perth.[2]

But passing from this minor point, it is beyond doubt that in Scotland the license to elect had first to be obtained from the king. And the king's assent to the result of the election was also sought before confirmation from the Pope was asked. Examples of such process will presently be given. One of the very few instances of the electors attempting to defy the wishes of the king was when, in 1178, the Chapter of St. Andrews, emboldened perhaps by the presence of the Papal legate, elected John, the Scot. The king, William the Lyon, utterly refused to accept John, and at his command Hugh, his chaplain, was consecrated, and put in possession of the see. The struggle that ensued, involving the grievous penalty of the whole kingdom being put under interdict and the king himself excommunicated, is a well-known incident in the ecclesiastical history of the country. But to the end the king adhered to his oath, 'by the arm of St. James,' that John, the Scot, should never enjoy the bishopric of St. Andrews, nor obtain rule in that see.[3] In theory, however, the victory in the end remained with the Pope. For eventually both John and Hugh resigned all claims to St. Andrews into the hands of Pope Lucius III., a new pontiff, who grasped the situation more fully than his predecessor. On their resignation the Pope appointed Hugh to St. Andrews and John to Dunkeld, thus giving effect to the king's wishes, and making, as Lord Hailes observes, 'that *his* deed which was the King's *will*.'[4]

According to *Scotichronicon*,[5] when in 1253 the Chapter of St. Andrews elected Robert de Stuteville, it was in opposition to the expressed will of the king, who desired the election of his chancellor, Gamelin. But the Pope,

[1] Lib. vi. cap. 42.

[2] *Chron. Mailros*, s.a.

[3] *Scotichronicon*, lib. vi. capp. 35, 36.

[4] *Annals*, s.a. 1183.

[5] Lib. x. cap. 8.

KING JAMES II.

Scottish National Portrait Gallery.

probably moved by the remonstrance of the king, refused to confirm the election ; and took on himself to appoint a third man, Abel, Archdeacon of St. Andrews. Abel died after a few months ; and then the king had his way. Such cases of opposition to the king are highly exceptional.

There is preserved at Rome in the Papal *Regesta* a document, printed by Theiner, which clearly testifies to the fact that it was believed in Scotland in the early part of the thirteenth century that the king could 'give' a bishopric to whom he would. In 1219 Walter, Bishop of Glasgow, was accused to the Pope, by one of the clergy of the Cathedral, of various offences of the gravest kind. Among these it was alleged that the bishop (who must be Bishop Walter), when he was chaplain to the king, gave to Philip de Valon, the king's chamberlain, 'one hundred marks, and promised a much larger sum to the Queen, in order that they might procure that the King should *give* him the bishopric of Glasgow. And so it was effected that, no canonical election intervening, he was promoted to the bishopric of Glasgow.'[1] We need not concern ourselves with the question whether there was a foundation for this serious charge ; it is enough for our purpose that it was believed to be possible.[2]

It seems to me that in some cases the king may have left the Chapters free to make their choice, reserving to himself the right to give or withhold his 'assent' after the election had been made. This conjecture seems to fall in with the fact that disputed elections, though not very frequent, do occur from time to time.

But another explanation may perhaps be given of these disputed elections. The measure of secrecy that was observed as to how the electors voted in the case of elections *per scrutinium* would render it easy for those

[1] Theiner, No. xxix.

[2] The *Chronicle of Melrose* is very precise that Walter, the king's chaplain, was *elected* to Glasgow on the 9th Dec., 1207, and consecrated on the Feast of All Souls (Nov. 2) in the following year. There can be scarcely a doubt that there was at least the form of an election. The fact that, though the matter was remitted by the Pope to Pandolf, Bishop of Norwich, to investigate, Walter continued Bishop of Glasgow till his death in 1232, looks as though the offence was not proved, or was, at least, condoned.

moved by conscience, or by personal animosity, to relieve their feelings without the dread of incurring royal disfavour. At any rate, the prevailing custom seems to have been to seek first the king's license to elect (*congé d'élire*), the king also claiming the right to assent or dissent to the choice of the Chapter when made.

Two documents printed by Theiner from the *Regesta* of Pope Gregory IX. put the position quite clearly. At the election of Randolf de Lambley, Abbat of Arbroath, in 1239, to the bishopric of Aberdeen, as it was reported to the Pope, the electors, 'the royal consent having been begged and obtained,[1] canonically and unanimously elected our beloved son . . abbat of Aberbredac,' etc.

The next record is even more valuable, for it refers both to the royal license and to the subsequent royal assent; and speaks of the obtaining of these as being *according to custom*. In the narrative of the election of David de Bernham to the bishopric of St. Andrews, the Papal mandate relates that the Prior and Convent of St. Andrews 'having first sought and obtained according to custom (*juxta morem*) from our most dear son in Christ . . the illustrious king of Scotland leave to elect (*eligendi licentia*) elected Master David de Bernham, subdeacon, Chamberlain of the said King.' And later in the writ it is said of the election that to it 'the king is said to have given his assent.'[2]

In the case of the disputed election to the see of Candida Casa in 1235, already referred to,[3] it is to be observed that the Chapter had claimed, whether truthfully or not, to have the royal consent for their election.

In this connexion it is worth noticing how frequently the more important sees were filled by appointments of the royal chaplains or other ecclesiastics holding offices in the king's court. From the *Chronicle of Melrose* and other sources we gather the following particulars. In 1163 Richard, the Chaplain of King Malcolm, was elected to St. Andrews; in 1164 Engelram, the King's Chancellor, was elected to Glasgow; in 1169 Richard, the King's

[1] Theiner, No. xcix, 'Implorato et obtento consensu regio.'

[2] *Ibid.* No. c. [3] See *Scottish Historical Review*, vii. pp. 18, 19.

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Chaplain, was elected to Dunkeld; in 1187 Richard, 'clerk of King William,' was elected to the see of Moray; in 1189 Roger, the kinsman and Chancellor of King William, was elected to St. Andrews. In 1199 William Malvoisin, the Chancellor, was elected to Glasgow, and afterwards was translated to St. Andrews. His successor at Glasgow was the King's nephew, Florence. In 1207 Walter, the King's Chaplain, was elected to Glasgow. His successor (1223) was William de Bondington, the Chancellor. In 1207 Adam, the King's clerk, was elected to Aberdeen. In 1209 Walter, Chamberlain to Alan Fitz Roland (married to the King's niece), was elected to Whitherne. In 1213 Robert, Chaplain of the King, was elected to Ross. And it would be easy to enlarge the list.

Occasionally Fordun and Bower do not hesitate to express themselves freely as to the pressure put on Chapters by the king. Notably with regard to the election of William Wischard to St. Andrews in 1271, we are told that it was 'plus regis timore quam sui amore.'[1]

Gamelin was elected Bishop of St. Andrews, and was confirmed by the Pope in 1255. Before his consecration, among certain charges made against him was the allegation that he had threatened the prior and canons of St. Andrews that if they did not elect him the king would expel them not only from their church, but also from the kingdom. We need not inquire whether the charges were true or false: it is enough for our purpose that they show what kind of charge was reckoned at the time as at least a plausible accusation.[2] It was probable that his position as chaplain to the king and Chancellor of Scotland was quite sufficient to secure the choice of the electors. It should be remembered that, even were no pressure exerted on the part of the Crown, the Chapters would often be desirous to have as bishop one who by his influence at Court would be able to serve them in the frequent disputes arising as to the property and immunities of the Church. Certain it is that Scotland in this respect presented no contrast to

[1] *Scotichron.* x. 28. [2] Theiner, No. cci.

England in medieval times. 'It is hardly too much to say,' observes a very competent authority on English Church History, the late Archdeacon Perry, 'that there was not one of the more distinguished bishops of the medieval period who was not employed in some State duties.'[1] And this remark made with respect to England is not less true of Scotland.

To our modern notions it is a little startling to find men appointed to bishoprics who were in the inferior ranks of the ministry. An example may be taken from England, and two or three from Scotland. Boniface, Archbishop of Canterbury, after his election received a faculty from Rome[2] to be ordained deacon and priest by any of his own suffragans. William Malvoisin, who was made Chancellor of Scotland in 1199, was only in deacon's orders when he was elected to the bishopric of Glasgow. On Saturday, 24th September, he was ordained priest, and on the following day bishop by the Archbishop of Lyons. Henry le Chen was not in priest's orders when elected (1282) to Aberdeen.[3] When Adam of Crail, one of the king's clerks, was elected to the bishopric of Aberdeen in 1207, the Pope inquired whether he had got himself ordained subdeacon with a view to his election.[4]

After the system of reservations and provisions by the Pope came to be in practice the rule, the wishes of the king were still generally effective. And towards the close of our period we have examples of the king directly nominating persons to the Pope, and the Pope giving effect to the nomination. In 1485 Parliament directed the king's commissioners to represent to the Pope that the king's will was that the Pope should allow the king six months to name to the Pope persons 'as is thankfull to his hienes,' and that none be promoted to prelacies or dignities 'without avise of his hienes.'[5] In an Act of Parliament of James V. (1526) we find a statement that practically represents the facts as they existed for some time previously: 'Quhen Prelaces, sik as Bishopprickes

[1] *History of the Church of England, First Period*, p. 506.

[2] *Cal. Pap. Reg.* i. 200; xv. Kal. Oct. 1243. [3] *Cal. Pap. Reg.* i. 465.

[4] See *Cal. Pap. Reg.* i. 30. [5] *Act. Parl.* ii. 171.

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or Abbacies, happenis to vaik, the nomination thereof perteinis to our Soveraine Lord, and the provision of the samin to the Paipe.'[1] The same language is again employed by the Parliament in 1540.[2]

On 11 Feb., 1544-45, the Earl of Arran, writing from Edinburgh to Cardinal Rudolpho Pio de Carpi, the special Protector of the Scottish Church at the Court of Rome, says: 'To this [the Scottish] nation an indult was of old granted by the Apostolic See, and was renewed by the last Clement (*i.e.* Clement VII.) by which it was permitted to the king's governors of the Scots within twelve months [from a vacancy] to nominate whom they would to all elective ecclesiastical dignities (*omnibus electivis sacerdotiis*) to be fully advanced (*integre profici*) by the Pope'; and he goes on to give the warning that the Scottish nation would defend their rights in this respect.[3]

After James IV. and his son, the youthful Archbishop of St. Andrews, had fallen in the slaughter at Flodden, in the confusion of the time Leo X. seized the opportunity of commending to the see of St. Andrews his nephew, Innocenzo Cibo, Cardinal-deacon of SS. Cosmas and Damian, 'thinking,' he said, in a letter to Margaret, the Queen-mother, 'that this would form a closer bond between us and your dear and beloved nation.' But this kind of token of Papal affection was naturally resented, and indeed was received with a storm of opposition in Scotland; and, as the Pope afterwards candidly admitted, seeing that his provision was ineffective, and learning that the Queen and Council preferred one of their own people, he cancelled the provision, and advanced Andrew Forman (Bishop of Moray), Archbishop of Bourges, to the see.[4] He adds that if this appointment is accepted he will in future preserve (and extend) the privileges enjoyed by the Scottish nation. It is plain that even the masterful Giovanni de' Medici was made anxious by the effects produced by his blunder. A little later John, Duke of Albany, writing to Leo X., declared that it was a privilege and custom acknowledged by Pope Innocent VIII. (1484-

[1] *Act. Parl.* ii. 309.

[2] *Ibid.* ii. 378.

[3] *Epist. Reg. Scot.* ii. 236-7.

[4] *Epist. Reg. Scot.* i. 267.

1492), Alexander VI. (1492-1503), and Julius II. (1503-1513) that for eight months after the occurrence of a vacancy of a Scottish bishopric, or monastery, there should be no promotion by the Pope except *ad preces Regias*: and further that this rule was observed by the Popes above named even in the cases of vacancies occurring at Rome itself (*etiam intra almae urbis mœnia*). This latter allegation is doubtless made because for some centuries it had been a right of the Pope, acknowledged throughout Europe, to appoint to any bishopric which had become vacant by the death or resignation of the bishop taking place at the Apostolic See, or its immediate neighbourhood.

It would seem from what has been said that, while it is evident that the influence of the Scottish kings had always been great in determining the appointments made to bishoprics, there had, towards the close of the fifteenth century, been something of the nature of a formal, or informal, concordat between the Popes and the Scottish monarchs on this subject. In 1485 we find James III., supported by Parliament, directing his commissioners to address strong language to the Pope about a recent appointment made by the Pope to the bishopric of Dunkeld. They are ordered to 'schew and declare determytly to our said haly fader that our souveran lord wil not suffre maister George Broun nor nane othirs that has presumyt to be promovit to the said bischopric of Dunkelden, contrar our souveran lord's mynd, will and speciale wreting, to have ony possessioune of the samyn.'[1] It is true that the king eventually yielded the point,—induced, it is said, by a gift of money.[2] But the tone of the communication served as a warning to the Roman curia.

Capitular elections were now a sham. What Gascoigne in the fifteenth century said of England is equally true of Scotland. An election was such only in name. The concurrence of the king and the Pope and a payment (*certa millia pecuniarum*) to the latter made a bishop.[3]

This chapter may now be brought to a close by briefly noticing three other features which disclose themselves in

[1] *Act. Parl.* ii. 171. [2] Myln, *Vitae Episc. Dunkeld.* 28 ff.

[3] *Loci e Libro Veritatis*, 46.

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our study of the relations of the Scottish Crown to the Episcopate. (1) As in England, so in Scotland, the administration and usufruct of the temporalities of a bishopric, such more particularly as the bishop's lands, were claimed for the Crown during the vacancy of the see. The Scottish Exchequer Rolls supply several illustrations of this fact. The vacancies of episcopal sees were often prolonged, and there may have been temptations in Scotland, as there certainly were in England, for the monarch not to hasten appointments. The basis of this practice of taking possession of the temporalities seems to have been the feudal conception that the bishop's lands and other temporalities were of the nature of an estate held *in capite* of the Crown, which in default of an heir reverted to the Crown, or as a fief which, because of the minority of the vassal, was subject to the lord's administration and profit. In close connexion with this was (2) the claim of the Crown to have the patronage, during a vacancy, of all benefices to which the bishop, if there were one, would be entitled to collate. Various notices of this claim, which was not always admitted without opposition, will be found in Joseph Robertson's preface to *Statuta Ecclesiae Scoticanae*. To these features we have to add (3) the claim for a long period made by the Crown to the possession of the moveable goods of a deceased prelate. This involved the forbidding of a bishop to dispose of such property by testament. The gossiping *Chronicle of Lanercost* tells us that it was commonly believed that Richard, Bishop of Dunkeld (who died in 1272), had been poisoned by order of King Alexander III., with a view to the king's obtaining possession of his moveable estate. After various attempts for the remedy of the hardship referred to, the matter was finally settled by the Act of Parliament of James II. in 1449-50. This Act was followed by a Royal Charter, a copy of which was transmitted to every bishop in Scotland. The Charter is thus summarised by Robertson:

It 'not only gave the Prelates full and free power to dispose of their moveables by will, renouncing all claim or pretension on the part of the Crown; but it provided that during the vacancy of a see the fruits of the bishop's

mensal churches and the revenues of his spirituality should be collected and administered by the vicar general, under account to the bishop's successor. Yet while thus liberal as to the bishop's personal estate, the charter was careful to reserve the king's right during the vacancy to the real estate of the see, and to the advowson of all benefices in the bishop's collation. But a declaration was added, that in thus taking possession of the bishop's domains the Crown did not mean to eject the tenants, husbandmen, or labourers; on the contrary they were to abide in their lands until the see was filled.'[1]

[1] *Statuta Ecclesiae Scoticanae*, i. cvi. The Charter is printed in *Acta Parl. Scot.* ii. 61, 62.

CHAPTER IV

THE CATHEDRALS

The reasons which originally determined the extent and boundaries of the several dioceses, are now in a large measure a matter only for conjecture. And the same may be said as to the choice of the several places in which the bishop's seat, see, or *cathedra*, was placed. The subject has been dealt with by Dr. Skene,[1] and there is little to add to his exhaustive discussion.

In some cases the knowledge, or tradition, of some previously existent episcopal foundation, of British or Irish origin, seems to have suggested the revival of a see in the same place. It was certainly so in the cases of Glasgow and Whitherne, and was most probably so in the cases of Dunkeld and Dunblane.

At Brechin there had been a house of Keledei, and it is certain that these Keledei were eventually superseded by, or transformed into, a chapter of secular canons. This change does not appear to have been conclusively effected till the middle of the thirteenth century. In the time of David I. a grant was made by the king to the 'Bishop and Keledei of the church of Brechin,' of the right to have a market in the town of Brechin on Sundays.[2] This grant was confirmed by King William. In 1250, Gregory IX., who in the year immediately preceding had confirmed to the Abbey of Lindores a grant of the Church of Dundee made by the bishop with the consent of his chapter, declared that no prejudice should be created to the rights of the abbey by the fact that the brethren who

[1] *Celtic Scotland*, ii. pp. 368-418. [2] *Reg. Brech.* i. p. 3.

were in the church of Brechin, and had been called 'Keledei,' were now called 'canons.'[1] These particulars point to the see having been placed where an existing body of ecclesiastics could be, and actually were utilised as a chapter.

There does not appear to be any evidence as to the grounds for the choice of Dornoch and Rosemarkie as the episcopal seats of the dioceses of Caithness and Ross. All that can be said is that there had been churches in those places during the Celtic period.[2]

The Bishop of Moray's seat had at first been moved about by the bishops, *pro libitu et voluntate sua*, between the little churches of Birnay, Spyny, and Kinnedor, the first a little to the south, and the two others a few miles to the north of Elgin. This we learn from a charter of Brice, Bishop of Moray, which is dated by Cosmo Innes between 1208 and 1215. Bishop Brice adds that after consultation with the clergy of the Church of Moray and many *viri prudentes*, he had supplicated the Pope to decree that the Church of Spyny, in which most of his predecessors had been installed, should be ever after the cathedral church of the diocese. The Pope, in response, commissioned the Bishops of St. Andrews and Brechin and the Abbat (Guido) of Lindores to investigate the matter, and, if they were satisfied, to give effect to the wishes of Brice. This was done, and at Spyny a cathedral chapter was constituted, framed after the model of the cathedral chapter of Lincoln.[3] But the cathedral was not destined to remain long at Spyny. Before 1224, repeated efforts had been made to have papal sanction for the transfer of the see to the Church of the Holy Trinity at Elgin, the grounds alleged for the proposed change being that Spyny was not a safe place in time of war, and also that it was situated in such a solitary spot that the clergy of the cathedral had to go a considerable distance to buy the necessaries of life, and that thus the services of the cathedral were interfered with. Again a commission was issued by the Pope, this time to the Bishop of Caithness,

[1] *Chartulary of Lindores*, pp. 117-119.

[2] See *Origines Parochiales*, ii. 567, 597.

[3] *Regist. Morav.* pp. 40-43.

the Abbat of Kinloss, and the Dean of Ross, who, on investigation, were in favour of the change. This was in 1224. The building of the glorious cathedral church was soon begun, and at Elgin the seat of the bishop remained during the rest of the medieval period.[1]

There seems to have been a constant tradition in the Church of Aberdeen that the episcopal see was removed from Morthlach to Aberdeen. The records are in details confused and conflicting; but perhaps the best solution of them is to suppose that there had been a bishop, probably of the monastic type, in the religious house of Morthlach in the eleventh century, and that on the property of Morthlach being transferred to Aberdeen the monastic bishop ceased. During the period with which we are concerned we know only of the Bishop of Aberdeen.

The seat of the Bishop of Argyll was placed in the island of Lismore in Loch Linnhe, where the remains of the cathedral (the smallest cathedral church in Great Britain) may still be seen.[2] The bishop of the diocese was generally known as 'episcopus Lismorensis,' though occasionally we find his title, as taken from his diocese rather than from his see, in the form 'episcopus Ergadiensis.'[3] The see had not been fifty years established when it was represented to Pope Innocent IV. that the situation of the bishop's seat in an island was not safe for those who dwelt there, and that access to it was dangerous by reason of a stormy sea. Accordingly in January, 1249, the Pope issued a commission to the Bishops of Glasgow and Dunblane to investigate all the circumstances of the case, and, if they thought fit, to cause the transfer of the see to a more convenient place. The Pope adds that he

[1] The commissioners of the Pope were addressed by the king (Alexander II.), on 5 July, 1224 He declared that he much desired the translation of the *ecclesia sedis* to the place 'juxta Elgyn,' which he had given to the bishop and clergy of Moray for the building of their church. *Regist. Morav.* p. 19. The ratification of the transfer by the Pope's commissioners, is dated a fortnight later, on 19 July. *Ibid.* p. 65.

[2] It is less than sixty feet long by thirty in breadth, without transepts, aisles, or nave. Joseph Robertson's *Scottish Abbeys and Cathedrals*, p. 78.

[3] As early as 1228 we find the vernacular form 'Haraldus, episcopus de Ayrgaythyl.' *R.M.* 25.

had been told that the King of Scots in the case of the transfer was willing 'to open the hand of his munificence' in endowment.[1] We hear no more of the matter, and the seat of the bishop still remained at Lismore.

The choice of Lismore as the seat of the bishop, when the bishopric of Argyll was erected about 1200, is probably to be connected with the tradition that the Celtic St. Moloc, or Moluach, 'bishop and confessor,' had had his church on the island.[2]

The Cathedral of the Isles was situated almost up to the sixteenth century in the Isle of Man. It was not till 1498 that the Pope issued an order 'for the erection of the Abbacy of Colmkill in the bischoppis sete of the Ilis quhil his principale Kirk in the Ile of Man be recouerit fra Inglismen.'[3]

The bishop's seat in Orkney seems to have been first placed at Christ Church, in Birsay, but was afterwards, in the first half of the twelfth century, transferred to Kirkwall.[4]

After these few words on the sites chosen for the cathedral churches of the bishops we may proceed to consider the constitution and organisations of the cathedral corporations.

The Constitution and General Organisation of the Cathedrals.

The cathedrals of Scotland were, with two exceptions, corporations of secular canons, that is, canons who were not bound by the vows of 'religious,' who were entitled to hold, and use at will, private property, and who lived (when resident) each in a separate house (*mansio*, or *mansum*) in the immediate neighbourhood of the cathedral church. They were bound to comply with the statutes of the cathedral to which they belonged, but otherwise possessed

[1] Theiner's *Monumenta*, No. 140.

[2] St. Moloc's feast was kept as a 'greater double' in the sixteenth century in the Church of Aberdeen. See the *Aberdeen Breviary* (*pars estival.* fol. v, *verso*). His day was 25 June.

[3] See *Reg. Sec. Sig.* i. fol. 81.

[4] See Anderson, *Orkneyinga Saga*, pp. lxxiv, 99.

a large liberty of action. The two exceptions were St. Andrews and Candida Casa or Whitherne, the Cathedral of Galloway. In the former the chapter consisted of canons regular of St. Augustine; in the latter the chapter consisted of brethren of the monastery of Premonstratensian monks, settled at Whitherne.[1]

The contrast between Scotland and England, in the thirteenth century, with respect to the proportion of secular to monastic cathedral foundations is very striking. In England, York, London, Lincoln, Lichfield, Hereford, Wells, Salisbury, Exeter, and Chichester, had chapters of secular canons. On the other hand, Canterbury, Rochester, Winchester, Ely, Worcester, Durham, Bath, and Coventry, were monastic foundations of Benedictines, and Carlisle (like St. Andrews) had its chapter of Austin canons.[2]

We shall first deal with the constitution which was common to the great majority of the Scottish cathedrals—those having a chapter of secular canons. The constitutions of all the cathedrals (except St. Andrews and Whitherne) were framed, substantially, on the same model. The chapter consisted of a body of ecclesiastics, forming a corporation, holding property for the common good, shared among its members, while to each member there was also assigned a separate allowance for his maintenance. The allowance, or *prebenda*, was ordinarily derived from the revenues of some parish church (sometimes of more than one), of which the canon was the rector. The spiritual charge of the parish was handed over to a vicar, and, after due provision had been made for his support, and for other incidents, the free income was the property of the canon. Occasional variations on this, the usual way of providing for the maintenance of a canon, will be noticed by-and-by. The number of canonries attached to cathedral churches varied much. And even in the history

[1] A Bull of Adrian IV., dated 1157, gave the Bishop of Aberdeen authority to choose whether his chapter was to consist of 'monks or canons,' *i.e.* secular canons. *R.A.* i. 6. The result shows that he chose the latter.

[2] The four Welsh cathedrals, St. David's, Bangor, Llandaff, and St. Asaph, were foundations of secular canons.

of the same cathedral, as time went by, new canonries were frequently added through the benefactions of the patrons of parish churches who would convey a church for the endowment of a new canonry, and a new canonry was created when the arrangement received the bishop's sanction.

In addition to the churches, each of which formed the prebend of a canon, it frequently happened that the cathedral chapter possessed the patronage of several other churches, of which the free income, after providing for a vicar, went into the common purse of the chapter, and was divided once a year among the members of the chapter according to certain rules. These were styled 'common churches.' To those who kept residence there was also a daily or weekly allowance for food known as 'commons' (*communa* or *communia*). Of this a double share was allowed to the dean.[1]

Further, besides the income derivable from the free revenue of prebendal and 'common churches,' the cathedrals were possessed of gifts of land, often of considerable extent, bestowed by pious persons either for the general good of the corporation, or for some specific object connected with the maintenance of divine service, as, for example, for lights (*ad luminaria*). Sometimes a parish church was given for the last named object, as when the Church of Dulergussyn, in Strathearn, and the Church of Rathmorcus were granted *ad luminaria* to the Cathedral at Elgyn.[2] Again, we find the Church of Inveralian granted for the maintenance of the fabric of the same cathedral;[3] and it would be easy to add to these examples. At this stage we must be content with conveying some general notions of the subject of cathedral finance.

The comparative fulness of the statutes of Aberdeen Cathedral has induced me to take Aberdeen, and its laws and customs, as a guide to the knowledge of cathedral constitutions. Occasionally, when the law or usage of other Scottish cathedrals differs materially from that of Aberdeen, attention will be called to the fact.

[1] The word *communa* or *communia* was also sometimes applied to the share of money from the common churches.

[2] *Reg. Morav.* pp. 70, 71.

[3] *Ibid.* p. 111.

The body of canons was known as 'the chapter,' and all questions concerning the management of the common property, such, for example, as the leasing, or the excambion, of lands, were decided at a meeting of chapter, in which every member had the right to give his view, and where every act was decided by the vote of the majority.

Among the canons four occupied places of special authority and dignity. These were the Dean, the Precentor, the Chancellor, and the Treasurer.

The dean (*decanus*) was the administrative head, and possessed disciplinary power not only over every member of the chapter, but also over the lesser clergy who were engaged in the conduct of the services of the cathedral, and, indeed, over the attendants and servants of the canons residing within the cathedral precincts. He was himself a canon, and a member of the chapter; but his position was of such distinctive eminence, that nothing is more common than to meet the phrase 'the Dean *and* Chapter' in the old writs and charters. It is the formal designation of the community, *collegium*, or corporation; and to 'the Dean and Chapter' the letters of the Popes are commonly addressed.

The canon next in dignity to the dean was the precentor, or as he was more commonly called, the chanter (*cantor*). It was his office to regulate the music used in the services of the church, to admit to office the boys who took part in the services, to see to their instruction and discipline, and to appoint the teacher in the song-school.

The third in rank was the chancellor (*cancellarius*). It was his duty to see that the service-books had been correctly transcribed, to compose the letters and charters of the chapter, to read, in the meetings of the chapter, letters and other documents that had to be considered, to prepare the list (*tabula*) of singers and readers told off weekly for the several services, and to be responsible for the safe custody of the books in the library of the chapter. He was the principal custodian of the chapter's common seal. He exercised control over the grammar school of the town, and appointed the master. The chancellor was necessarily a man of some literary attainments.

Fourth in dignity was the treasurer (*thesaurarius*). He was custodian of the treasures of the church, the precious relicks, and the *ornamenta*, largely consisting of vessels of silver and gold and costly vestments. At Aberdeen it was the duty of the treasurer to provide certain of the lights and tapers, incense and charcoal for the thuribles, rushes and mats for the floor, and the elements of bread and wine for the celebration of mass at the several altars.[1]

The four officers whose duties have been very briefly indicated were known as the *principales personae*, and sometimes as the dignitaries, of the cathedral. When sitting in choir, the *principales personae* occupied the four terminal stalls;—at the west end of the choir stalls sat the dean on the south, and in the corresponding stall opposite to him on the north sat the chanter; while in the two terminal stalls at the eastern end of the topmost row of stalls the chancellor sat on the south and the treasurer on the north. The reasons for this arrangement are not stated, but it obviously enabled these four officials to supervise the behaviour of the whole body of clerks and boys while the services of the Canonical Hours were being sung. That there was need for such supervision is plain from certain of the cathedral statutes.[2]

How the Dean and Canons were appointed.

Still taking Aberdeen as representing the constitution of cathedrals founded with a chapter of secular canons, we learn that by its early constitution all the prebends attached to canonries, with the exception of that of 'the canonry of the deanery,' were in the gift of the bishop. The dean was chosen,—to use technical language,—'elected or

[1] At first this was done at the *expense* of the dean (*R.A.* ii. 45), but afterwards (1456) at the expense of the dean and chapter (*ibid.* 76). If Moray followed in all particulars the customs of Lincoln, which it had taken as a model, the treasurer would be also pay-master of those serving in the cathedral.

[2] In 1366 we find it enacted of the clergy, 'qui, cum in choro fuerint, gravitatem servent quam locus et officium exigunt, non insimul aut cum aliis confabulantes seu colloquentes, aut literas vel scripturas alias legentes, sub pena ut superius est expressum.' *R.A.* ii. 62. As late as 1540 we find an injunction to the like effect. *Ibid.* 116.

postulated' by the whole body of the canons, or by the 'greater or saner part' of them.[1] If the election, or postulation, was canonical, that is, conducted in due form, and the person chosen 'fit' (*idoneus*), the choice of the canons was confirmed by the bishop; and the dean-elect, after taking a solemn oath of fidelity, by which he promised to defend the rights, customs, and liberties of the cathedral, was installed in choir and assigned his place in chapter by the bishop himself, or by some canon deputed by him for the purpose. Each of the canons was also required, before being admitted, to take an oath of fidelity and of obedience to the bishop and the chapter.

As time went on new canonries were founded, and sometimes the founder reserved to himself and his successors the right of presentation to the prebend, and sometimes the right of presenting, not only to the prebend attached to the cathedral, but also to the vicarage of the prebendal church.[2]

At the Cathedral of Ross in 1235 it seems that there were only four canonries, and that the prebends of these were so small that the canons could not reside.[3] Eventually the prebends reached some nineteen or twenty in number.

In the earliest notice (1256) which we have of the constitution of the chapter of Aberdeen we find that there were (including the dean) thirteen canons. By the year 1425 the canonries had increased in number to twenty-nine.[4] It seems impossible to ascertain precisely

[1] Pope Alexander IV. to the Bishop of Ross (1255). 'Statuisti quod major Decanus sicut in Saluberiensi ecclesia eligatur.' Theiner, p. 70.

[2] There were numerous varieties in the arrangements: thus Duncan, Earl of Fife, in 1330 allowed the bishop to erect the church in Kincardine O'Neil into a prebend of the cathedral, reserving to himself and his heirs the right to present to the prebend on every third vacancy.

[3] Theiner's *Monumenta*, No. 80.

[4] The sketch given by some Aberdeen ecclesiastic in 1527 (*R.A.* ii. pp. 251-253), after recounting the thirteen canonries of the time of Bishop Peter de Ramsay, records the foundation of the other canonries as follows: (14) Crechmont in 1262; (15) Lummey in 1314; (16) Aberdour in 1318; (17) Forbes in 1325; (18) Ellon in 1328; (19) Kincardine in 1330; (20) Invernochty in 1356; (21) Methlack in 1362; (22) Tullynesle in 1366; (23) Dulmaok in 1368; (24) Turreff

the number of canonries at Glasgow in the earliest days of the cathedral. In 1170 Pope Alexander III. confirmed twenty-seven churches to the bishop; but of these fifteen would appear to have been 'mensal' churches of the bishop (*quae proprie ad mensam tuam spectant*). If this was so at the time, it is certain that several of them were afterwards erected into prebends of canonries; for the bishops were often generous benefactors of their cathedrals. Eventually there were at least thirty-two canonries at Glasgow. The Cathedral of Moray, according to the bishop's original foundation, had (including the dean) eight canons. The number was afterwards largely increased, till it eventually reached some twenty-four or twenty-five.[1] Brechin never possessed a large chapter: the diocese was the smallest in Scotland. The original canonries, as declared in 1372, were only eleven in number, of which four were 'dignities,' viz. the deanery, the precentorship, the chancellorship, and the treasurership.[2] But, as in other cases, we have here also erections of new canonries, such as Lethnot (1384), Glenbervie and Futhnewyn (Finhaven) in 1474.

It has been already explained that each canon, whose prebend was a parish church, was bound to provide for the maintenance of a priest to take the spiritual charge of the parish. In early times the clergyman appointed to this office was sometimes a stipendiary, removable at will. But precepts from Rome and local synodical enactments insisted on the deputy, or vicar, who served the parish having a permanence of tenure. And thus eventually prebendal parishes came to be served by deputies known as 'Perpetual Vicars.'[3]

The arrangement as to stipend between the canon rector and his perpetual vicar varied in different cases.

in 1412; (25) Kinkel in 1420; (26) Coldstain in 1424; (27) Rothwen and (28) Monymusk in 1425. In this list the bishop's canonry with the prebend of St. Nicholas, Aberdeen, is not included.

[1] In 1473 there were apparently twenty canons. See *Regist. Morav.* p. 256.

[2] The archdeacon was a canon, but not a dignitary. *R.B.* i. 19.

[3] The same rule was enforced in respect to the appropriate churches of monasteries.

Sometimes the tithes of grain, known as the 'garbal tithes,' or 'greater tithes,' were assigned to the rector, while the tithes of milk, butter, cheese, wool, and of lambs, calves, and young of other animals, generally known as the 'lesser tithes,' were counted as the vicar's portion. Sometimes the whole revenues of the parish were assigned to the rector, who was required to pay to the vicar a fixed sum of money, or 'pension,' as it was called. Thus, about 1430, John Cameron, Bishop of Glasgow, erected six new canonries in his cathedral, the prebends of which were six parish churches. The bishop in his decree of erection enjoined that the vicars of five of these parishes should receive an annual *pension* of twenty marks, while the sixth was granted a *pension* of fifteen marks.[1]

It is a matter of history that the chapters of at least two of the Scottish cathedrals,—and those two among the most wealthy and influential in the kingdom,—had sought guidance from England, if not at the time of the original founding of the cathedral bodies, at least in the re-adjustment of their constitutions. While the Cathedral Church of Moray was still situated at Spyny the dean and the chancellor of the cathedral made a journey to Lincoln to ascertain on the spot the nature of the constitution of that great cathedral. It is an interesting fact that the earliest account of the constitution of Lincoln that now remains anywhere is to be found in the document supplied (1212) at request by the dean and chapter of Lincoln to the dean and chapter of Moray, preserved in the Register of Moray, now in the possession of the Advocates' Library.[2] It would appear that even before this visit Bishop Bricius, who must have been acquainted with Lincoln, had resolved on making it his model. But it should be observed that although the constitution of the Cathedral of Moray was

[1] The word *pensio* was used in a general way of any annual payment to whomsoever made out of the revenues of an ecclesiastical benefice.

[2] A similar case is that of Salisbury, of the constitution of which our earliest information comes from a document which had been supplied for the use of the Cathedral of Dublin. See *Register of St. Osmund* (*Rolls Series*). The Lincoln constitution of 1212 will be found in *R.M.* and in *W.C.* i. 537.

based on that of Lincoln, it was 'the use of Salisbury' that was followed in the rendering of Divine Service.[1]

In 1259 Glasgow obtained from the dean and chapter of Salisbury an account of the constitution and customs of that famous cathedral. But the chapter of Glasgow, with excellent good sense, resolved to adopt only those provisions which might appear to them useful, and also reserved to themselves the right to change those which they had adopted if a majority of the chapter thought fit.[2]

There was in the constitutions of the English cathedrals founded with secular canons a large and substantial agreement. Differences were mainly to be found in customs and minor points of ritual.

We have good ground for believing that the same is true of all the Scottish cathedrals with chapters of secular canons.

Vicars of the Choir and Boy Choristers.

We have now to direct attention to another class of vicars, entirely distinct from the parochial vicars. Every canon was bound to provide a deputy to take part in the services of the cathedral. This deputy was known as the canon's 'Vicar of the Choir,' or 'Vicar Choral.' Another name frequently applied to this official is 'stallary' (*stallarius*), that is, vicar attached to the canon's stall in the cathedral, as distinguished from the vicar in charge of the canon's parish.

The statutes of the cathedral, or the bishop's decree for the erection of a new canonry, prescribed whether the vicar attached to any particular stall should be a priest, a deacon, or a subdeacon. In a few cases the obligation imposed on the canon was to maintain a certain number of boys to assist in the services instead of providing a clerk in Holy Orders. Thus in certain statutes of Glasgow (? 1426-46) we find the canon who had Durisdeir as a prebend required to provide for the support of six choir-boys instead of a vicar. In 1437 there were at Aberdeen twelve priest-vicars, seven deacon-vicars, and ten subdeacon-vicars. The salaries of these vicars are

[1] *R.M.* p. 109. [2] *R.G.* i. 174.

recorded. One of the priests received six pounds; one, five pounds; and the remaining ten, four pounds each. One of the deacons received three pounds, six shillings, and eight pence; and each of the others two pounds, thirteen and four pence. The subdeacons had salaries of two pounds, except one who received only one pound, six and eight pence.

The allowance which the canons were required to make to the vicars of their stalls was augmented in some cases by appointing vicars to chaplaincies in the cathedral. It was a common practice for members of the greater or lesser baronage, and for persons of means, such as the well-to-do burgesses of the towns, to endow an altar in the cathedral, where masses would be said or sung for the well-being of the founder or others, while living, and for the repose of their souls after their decease. In some cases a priest distinct from the vicars of the choir was appointed to this duty, and received the revenues from the endowment. But in other cases the chaplaincy was given to one of the vicars. Again, pious persons sometimes assigned rents expressly for the benefit of the vicars.[1] Thus in time the vicars of the choir came to be possessed, after the manner of a corporation, of property for their own exclusive profit. In the excerpts from the Martyrology of Glasgow[2] we find Bishop Andrew (obiit 1473) as 'founder of the college of the Vicars of the Choir of Glasgow.' This probably refers to the bishop's ratification (1467) of a mortification, in favour of the vicars, of lands and rents.[3] The vicars were numerous, as compared with the canons who kept continuous residence, and their influence was, at least in Glasgow, so considerable that it had to be expressly stated (? A.D. 1200-2) that they had no voice in the election of the bishop, with which alone the canons were entitled to deal.[4]

At Brechin, in 1447, an inhabitant of the town, by name Robert of Hyll, made a grant, for the good of the souls of himself and his wife, etc., of a tenement in the town,

[1] See the gift of a house with a croft to a deacon-vicar and subdeacon-vicar. *R.G.* i. 181.

[2] *R.G.* ii. 614. [3] *R.G.* ii. 414. [4] *R.G.* i. 84.

together with an acre of land to 'the chaplains of the choir' of Brechin at a rent of ten shillings, to be paid to the king for all secular service.[1] This grant was confirmed under the Great Seal in 1450; and in 1453 seventeen 'vicars and perpetual chaplains of the choir' (named) oblige themselves to allow Hill and his wife to have the use of the house and the acre of land for their lives,—the occupants agreeing to keep the roof in repair and pay the ten shillings to the king's exchequer. Hill was also to pay the vicars one mark, in return for which the vicars engaged to sing a trental for him and his wife when they should depart this life.[2] This case illustrates very well the growth of the property of the vicars-choral; and the motives which commonly prompted such benefactors are also apparent. The choir-vicars or chaplains of the choir (for the names seem to be used indifferently) had their 'common procurator' to transact their legal business.[3] The vicars-choral holding property in common finds frequent parallels in the cathedrals of England.

The term 'Chaplains of the Choir' (*capellani chori*) is sometimes used simply as an equivalent for priest-vicars.

It was the general rule in Scottish cathedrals whose statutory regulations have come down to us, that the habit used at the choir services by the vicars should be provided by the canons, each supplying his own vicar with a surplice and cope of coarse black cloth, as at Aberdeen in the thirteenth century. And, both for decency's sake and for the protection of the purses of the canons, there were regulations that the vicars should be careful to preserve their vesture expressly for use in church, to take it off as soon as they returned to their houses, and to keep it in a clean place.[4] In the next century (1366), besides the surplice and cope, an amess (or cape) of black fur (*almuchium nigrum furratum*) had to be supplied by each canon to his vicar.[5] A variety of usage in the Cathedral of Ross will be noticed hereafter.

[1] *R.B.* ii. 68. [2] *Ibid.* ii. 78, 96, 97. [3] *Ibid.* 102. [4] *R.A.* ii. 48.

[5] *Ibid.* 58. It is plain from Bishop Ingelram's constitutions of 1448 that the *capucium foderatum* was considered as the same vesture as the black furred amess of 1366 *R.A.* ii. 72.

As time went on the stipends of the vicars of the choir were increased; and at Glasgow, for some of the vicars, the stipend was actually doubled in the year 1480. It would seem that there was a difficulty in getting clergy to undertake the duties at the small stipends originally fixed. The purchasing power of money was falling; and the resolution of the chapter, we may feel quite sure, was not the outcome of mere good-nature. The deed, in which the resolution is embodied, sets forth that the ordinance is 'to the praise of Almighty God, and the increase of divine worship, and to the end that the number of those serving God in the choir of Glasgow may be increased.'[1] It does not appear, on the face of the ordinance, that this doubling applied to any but five-pound vicars.

At Elgin in 1489 the stipends of the vicars of the choir were fixed as follows:—One received 12 marks (Scots); six others, 10 marks; one, 8 marks; three, 7 marks, and six, 5 marks, each being paid by the canon whose vicar he was.[2] The vicars-choral at Elgin were to receive four months' notice before the termination of their engagements.

At Aberdeen, in 1506, as we learn from the constitutions of Bishop Elphinstone, the allowances to the vicars of the choir had increased considerably since 1437. A new arrangement was made: the sums assigned to be paid by each canon were thrown into a common fund, and from that the priests who were vicars, now twenty in number, were paid ten pounds each; two deacons received eight pounds each; and two subdeacons, each six pounds, thirteen and fourpence. It was designed by Elphinstone's constitutions that there should be eleven boys and two acolytes. Each acolyte was to be paid four pounds, and each boy two pounds, thirteen and fourpence. If we add to those mentioned a sacrist receiving ten pounds a year,

[1] The writ then proceeds, 'We the Dean and Canons of Glasgow, whose names are subscribed, consent for ourselves and our successors, and severally each consents, to the augmentation of the stipends or pensions of the Vicars of the Choir ministering in our stalls in the manner following.' It is then provided that each vicar who formerly received five pounds should for the future receive ten from the prebendary in whose stall he ministered. *R.G.* ii. 443.

[2] *Reg. Morav.* pp. 268-269.

and the master of the song-school (*magister scholae musices*),[1] to whom the precentor paid six pounds *per annum*, we have a tolerably accurate picture of the whole cathedral establishment, in addition to the dean and canons.

By the same constitutions it was enacted that the vicars-choral should receive the usual and customary *communia*, and a decent habit.

A most important rule of Elphinstone's constitutions was that which gave fixity of tenure to the priest-vicars. They were to hold office for life, unless deprived by process of law. In fact, it is plain that Elphinstone desired to raise the position of the priest-vicars : they were from that time forward to be instituted to their office with the formal ceremonial of placing a ring upon the finger.[2]

From what has been said it may be observed that the deacon-vicars and subdeacon-vicars were very much reduced in number, and their places supplied by priests. As a reason for this I would offer the conjecture that as the stipends of the vicars came to be eked out by payments made from foundations for masses for the dead, it was desirable that vicars should be capable of profiting from this source of revenue, and therefore should be in priest's orders.

It has been conjectured that the origin of vicars of the choir is to be found, not as a device for allowing or encouraging the non-residence of the canons, but in the obligation upon the canons to sing the service of the church, a duty which many of them were quite incapable of performing. However this may be, much care was taken that the vicars were competent to take their several parts in the service. Before appointment they were subjected to a careful examination as to whether they knew how 'to read and sing' (*an sciat legere et cantare*), *i.e.* as one may presume, to interpret the musical notation of the Gregorian plain-song, and to render it vocally. If they passed this examination successfully, they were subjected to a year's probation that they might learn the three service-books that contained the music of the choir services, viz. the

[1] This official is styled in another ordinance of Elphinstone 'Preceptor scholae cantationis.' *R.A.* ii. 115.

[2] *R.A.* ii. 93.

Psalter, the Hymnary, and the Antiphonary.[1] In Elphinstone's sixteenth century ordinance we read that the vicars should be instructed 'at least in Gregorian song.' The words, 'at least' point, I imagine, to the fact, known to us from other sources, that music arranged in harmony for different voices and with contrapuntal adornments, designated in the language of the period as 'prick-song,' was now coming into use.[2]

To those familiar with the long files of boy-choristers in modern cathedrals, it may be a surprise to learn that in the thirteenth century statutes of Aberdeen provision is made for only four boys well instructed in song, who were to receive payment out of the common purse. Two of these boys, in addition to singing, were to act as taper-bearers, and the other two as thurifers. As we have already seen, at a later time the number of the boys was increased to eleven, according to Bishop Elphinstone's design, though it would seem that eventually no more than six were actually on the foundation.[3] At Glasgow, too, there were no more, so far as I have observed, than six choir boys.

If not at first,[4] certainly before the close of our period, separate residences were provided for the vicars at Aberdeen and Glasgow, and presumably at the other cathedrals. At Glasgow we find a record of a gift of 'orchards,' that is, kitchen-gardens, for the vicars. At Aberdeen, in the sixteenth century, there is a reference to the *locus vicariorum* being constructed anew, and the direction is given that the gates should be closed at eight o'clock in the evening during the winter, and at nine in summer.[5]

[1] *R.A.* ii. 47. [2] *Ibid.* 102.

[3] Compare *R.A.* ii. p. 109 and p. 110.

[4] It seems probable that, before separate residences were provided for the vicars of the choir, each vicar lived in the manse of the canon whose vicar he was. This was not uncommon in England.

[5] In this connection it may be mentioned that we have in the same body of statutes an ordinance 'quod mulierculae non famulentur in domibus canonicorum aut capellanorum, nisi causa necessitatis et gratia importandi ea quae domui sunt necessaria, quibus expletis statim recedant et quod desuper fiat articulus inquisitionis annuatim tempore visitationis.' *R.A.* ii. 117.

The vicars of the choir, it would thus appear, were less badly provided for than one might at first imagine. Besides their stipends they had their place of residence, their choir-habit, and generally, if not always, a share in the daily allowance, or *quotidian*, as it was styled. When they became formed into a corporation or *collegium*, they had further their shares of the rents of their lands and tenements.

The duties of the vicars in choir and at the altar are laid down with much particularity. But to describe them would demand on the part of the reader a greater familiarity with the details of ecclesiastical ritual and ceremonial than it is reasonable to expect from any but technical experts. The singing of the services of the canonical hours and the celebration of certain masses were indeed essential elements in the very idea of a cathedral. But to deal adequately with the details of the service and the accompanying ceremonial would require a considerable treatise, of interest only to liturgical students.

So little has been discovered about the Cathedral of Ross that it may be allowable here to give a few particulars derived from a letter of Pope Alexander IV. to the bishop confirming his cathedral ordinances in the year 1255.[1] Beside the four usual *principales personae* (of whom the dean was to be elected by the canons, 'as in the Church of Salisbury') there was a subdean and a succentor. All these six had to be in priest's orders; the archdeacon should be in deacon's orders, and all the other canons in priest's, or deacon's, or subdeacon's orders. The bishop, who held a prebend, was to provide 'a perpetual priest-vicar,' and give him a stipend of six marks. The archdeacon had also to provide 'a perpetual priest-vicar.' The simple prebends were each to furnish a subdeacon-vicar and to supply him with a black cope and surplice. The perpetual priest-vicars of the choir were to supply their own copes and surplices. The four dignitaries had also each a choir-vicar, presumably a priest, and the stipends were provided not out of the purses of the dignitaries (as was usual elsewhere) but from the revenues of certain churches. It may be observed that the appointment of

[1] Theiner, pp. 69-70.

any *perpetual* vicars-choral seems unusual at this period, though at a later date we find (as has been noticed) Bishop Elphinstone giving the vicars-choral of Aberdeen fixity of tenure.

In 1350, John, Bishop of Moray, in a petition to Pope Clement VI., states that there were then seventeen residentiary chaplains in the Cathedral of Elgin who could not live on their stipends, and he prays the Pope to confirm a gift which he made to them of two churches, Brounath (? Brynnath) and Altre (Altyre), of the value of 40 pounds of Tours, and also the gift of Alveth (Alves) made to them by Thomas Randolph, Earl of Moray, valued at 20 pounds of Tours after the parochial vicar's allowance had been deducted.[1]

The vicars of the choir played a very important part in the actual life of the cathedral communities, more especially in the too frequent absence of the canons; and it has been thought well to describe their position with some fulness.

[1] *Calendar of Papal Registers: Petitions to the Pope*, vol. i. p. 200.

CHAPTER V

THE CATHEDRALS—*Continued*

HAVING exhibited a general view of the two bodies of ecclesiastics, the canons and the vicars of the choir, who figure in the old records, we may proceed to deal with some minor details of interest. If not at the beginnings of the Scottish cathedral establishments, certainly at a later time, we find that a canon was appointed to perform the duties of the dean in his absence. He was known as the subdean. Similarly the precentor had a deputy, known as the subchanter or succentor. The treasurer, again, was assisted in that part of his duties that concerned the care of the *ornamenta* of the church and the providing of the things necessary for the celebration of mass and of divine service, by one or more officials known as sacrists.

The requirements as to the residence at the cathedral of the dean and canons will appear to most as extremely indulgent. In the first body of cathedral statutes of Aberdeen that have come down to us, dated 1256, the dean was required to reside only 'the greater part of the year,' and that, either continuously or at intervals. The other three of the *principales personae*, the precentor, the chancellor, and the treasurer, were not required to give more than six months' residence.[1] Permission might be given to any canon, excepting the dean, whether holding

[1] I cannot recollect finding any notice in the Aberdeen statutes of the length of residence required of a canon, not being a dignitary. At Wells, in the thirteenth century, an ordinary canon had to reside six months if he were to receive anything from the corporate or common funds of the chapter, while the dignitaries had to reside eight months

or not holding a dignity, such as that held by a *principalis persona*, to the effect of relieving him altogether from residence, if engaged in the service of the king or of the bishop, or if studying at the 'Schools,' that is, the English or foreign Universities. The frequency of the presence at Court of ecclesiastics holding high office in the Church is a feature very observable to those who will examine the names of the witnesses to royal writs or charters, while there is ample evidence that the large body of those learned in the Canon Law had frequented the more famous of the great continental seats of learning. At Glasgow (1266) the four *principales personae* had to reside at least half the year, and the other canons only three months.[1] Canons not personally resident lost the daily or weekly distribution of commons; but otherwise, if they kept the minimum of residence, or were licensed to be absent, they drew the whole of their prebend (after providing for their parochial and their choir vicars), as also their share of common funds.

In 1366, at Aberdeen, an ordinance was adopted with a view to restraining the growing evil of non-residence. It was enacted that every canon not keeping 'due residence to the Statutes' should be mulcted in one-seventh of the income of his prebend, which sum was to be divided proportionally among those who had kept residence.[2]

It is plain that the larger the number of canons who failed to keep the minimum of residence the more there was to divide out of the common fund among those who satisfied as to residence. By the regulation just referred to a further addition was made to the income of the residents. Thus it was plainly the interest of the few resident canons that as many as possible of the other canons should not reside.

At Aberdeen, in 1448, a change was made in the destination of the fine of a seventh: it was no longer to go

(see Freeman's article on 'Cathedrals of the Old Foundation' in *Essays on Cathedrals* (1872), p. 149); but, as we have seen, at Aberdeen only six months' residence was required of the dignitaries, so we may suppose that a shorter period must have been all that was required from an ordinary canon.

[1] *R.G.* i. 172. [2] *R.A.* ii. 57.

to the incomes of the resident canons, but to the 'fabric of the church,' that is, the fund for the repair of the building and the up-keep of the furniture, *ornamenta*, etc. From what has been said it is plain that for many of the canons their prebends were simply of the nature of pensions with no personal duties attached. The revenue of an ordinary, or, technically, a 'simple' canonry was said to be 'a compatible benefice' (*beneficium compassibile*), that is, a benefice which could be held in conjunction with one or more similar benefices. Hence it is very common to find canons of cathedrals pluralists on a large scale. The evil was not so marked at first, but it grew to large dimensions before the Reformation.[1]

Of course, with the help of papal dispensations, which will be dealt with hereafter, there was scarcely any limit to the number of benefices that might be accumulated on any one person.

Frequency of Non-residence.

The late Mr. E. A. Freeman, in his essay on 'The Cathedrals of the Old Foundation,' in which he deals with the English cathedrals having chapters of secular canons,[2] remarks that 'the canons as a class became non-resident,' and notices cases where even the heads of religious houses, who by reason of their office could not be resident, were from time to time appointed to

[1] A few examples may be given by way of illustration. Thomas Bell (1431) was at once a canon of Aberdeen, a canon of Brechin, perpetual vicar of Montrose, and official of Brechin (*R.B.* ii. 34). John Senes, Doctor of Decrees (1445) was a canon of Glasgow, a canon of Aberdeen, and Official-General of St. Andrews (*R.B.* i. 98). Master William (1266) was archdeacon of St. Andrews and canon of Glasgow (*R.G.* i. 174). In 1500 Andrew Liel was treasurer of Aberdeen and canon pensionary of Brechin (*R.B.* i. 218). In this case it may be presumed that a dispensation had been procured from the Pope, for the treasurership of Aberdeen was an 'incompatible benefice.' It was by a dispensation of Innocent VI. (1367) that William Greenlaw was allowed to hold conjointly the archdeaconry of St. Andrews, the deanery of Glasgow, and a canonry in the cathedral at Elgin (*R.B.* ii. 396). Andrew Dunbar (1544) was dean of Moray and canon and Official-General of Glasgow (*R.G.* ii. 555).

[2] *Essays on Cathedrals*, by various writers, pp. 137-155.

canonries in English cathedrals. The story of our Scottish cathedrals is not without examples of the same strange practice. In the first half of the thirteenth century we find the Abbat of Scone as a canon and prebendary (of Kildonan) in the Cathedral of Caithness. He was to supply a priest-vicar to the cathedral but was not bound to residence.[1] At the close of the thirteenth century (1296), in the small chapter of Dunblane, there were no less than three abbats holding canonries—the Abbats of Inchaffray, Arbroath, and Cambuskenneth. The first named held the precentorship, an office which in theory required continuous residence. And, moreover, we learn from the papal letter,[2] which supplies this information, that they held their cathedral appointments 'ratione dictorum monasteriorum.' But apart from such exceptional cases it is plain that the non-residence of the canons was a common feature in the actual life of the cathedral foundations. Once appointed, there were many men who preferred to accept the revenue derivable from their prebend, even though diminished, as for example at Aberdeen, Moray and Glasgow, by the fine of a seventh, and to lose their share in the fund derivable from the common churches, than to make residence. The statutes of Aberdeen at successive periods show how hopeless it was to contend against the growing practice of non-residence.

As early as 1262 the statutes of the Cathedral of Glasgow are very frank in the language they use as to non-residence. 'Certain of the canons are pleased to bear the name,' we are told, 'and are willing to receive in full the revenues of their canonries; but they entirely neglect to perform the duties of their office.'[3] The same language is repeated a hundred and seventy years later.[4] Accordingly, rules were drawn up to mitigate the evil; but they were drawn up by a body consisting, among others, of many of the defaulters, and they seem to us

[1] The evidence will be found in *Origines Parochiales*, vol. II. part ii. pp. 601, 622.

[2] Theiner's *Monumenta*, No. 355.

[3] *Reg. Glasg.* i. 172.

[4] *Ibid.* ii. 341.

sufficiently indulgent. The dean, precentor, chancellor, treasurer, and subdean, were bound to reside for at least six months each, while the other canons might satisfy by three months. Residence might be continuous or at intervals, in no case less than thirty days' continuous residence being allowed to count. Failure to meet these requirements was punished by the loss of the share in the division of the 'communa' and the loss of one-seventh of the prebend, which seventh was to go to the building, or maintenance of the fabric of the cathedral. In the distribution of the 'communa' (the term being here applied to the share of income from 'common churches'), the reasonable rule was adopted that the canons who had qualified by sufficient residence were to receive shares in proportion to the amount of the measure of their services. The rule as to residence was not to apply to the two archdeacons, inasmuch as their duties involved their absence in the visitation of the parish churches in their respective archdeaconries (Glasgow and Teviotdale).

It is plain from the statutes of Bishop John Cameron (1426-1446) that things were no better at Glasgow in his day.[1] A simple prebend in a cathedral was regarded by most as an addition to income, practically involving no duties, and capable of being held, even without a special papal dispensation, together with one or more benefices in other places.

In 1455 the Abbat of Paisley, appointed by the Pope, made inquiry on oath into the state of things at Glasgow. As a result he declares that of the canons 'few or none' made residence in person, and he considers that the reason was that the distribution of the 'communa' was too small to induce them to reside. The remedy that commended itself was to add to the 'common churches,' so that the distribution of the 'communa' and 'the capitular table' might have more to offer. It would have been regarded as revolutionary to have demanded attendance on the score of receiving the income of the prebend. From this time forward it is plain that the interest of those who desired to benefit the cathedrals was directed rather to benefiting

[1] *Reg. Glasg.* ii. pp. 341-357.

the position of the resident vicars, than to the creation of new prebends. The devout sentiment of the time also took the form of erecting chantries, in which no pay was given, except for the actual performance of the duties of the chantry-priest.

In the Cathedral at Elgin the rule for docking the prebend of one-seventh[1] in case of non-residence, was existent, at least in theory, from 1240.[2] But the rule was not to apply to the bishop's prebend of Forres, doubtless for the reason that the bishop's duties called him to all parts of his diocese. And, for the same reason, only forty days' residence was required from the archdeacon, while the four *principales personae* were bound to give residence for at least half the year.

At Elgin, in 1488, it was attempted to enforce residence. Several of the canons had for a long time neglected to give personal residence at the cathedral. They were duly warned, and a summons was served upon each personally. Nevertheless, no fewer than ten of them disregarded the warning; they were declared contumacious, and it was resolved that the penalty of deducting a seventh from their prebends should be inflicted. The proceedings, which are detailed at length, all point to the conclusion that, as a matter of fact, neglect to reside had for some time past been condoned, or in practice overlooked.[3] It would seem that the administrators of the statutes had themselves been lax, and very probably those, who ought to have seen to the due administration of the law, were themselves benefiting by its non-observance.

A note of a visitation of the Chapter of Glasgow, made in February, 1501 (? 1501-2), has been preserved. From it we find that the dean 'does not make residence'; and the same observation is entered concerning eight of the canons.[4]

But if the state of the cathedrals was unsatisfactory in Scotland, those who are acquainted with the history of the English cathedrals will, I am inclined to think, judge

[1] At Salisbury the fifth of the prebend was confiscated according to the new constitution (1215).

[2] *Reg. Morav.* 105 ff.

[3] *R.M.* No. 209.

[4] *Reg. Glasg.* ii. 611-612.

that the state of things in England was yet more discreditable. In the fourteenth and fifteenth centuries the non-residence of the prebendaries had become the rule, and the chief officials of the cathedrals were frequently absent, and, when present, were often negligent of their duties.[1]

The Bishop a Canon in some Cathedrals.

In some of the Scottish cathedrals (certainly in Caithness, Moray, Aberdeen, Brechin, and Ross), we find the bishop holding a canonry and prebend. This arrangement, though unusual, had parallels in the English cathedrals of Salisbury, Lincoln, Chichester, and Lichfield,[2] and in the Welsh cathedral of St. David's. At Aberdeen the bishop had the Church of St. Nicholas, Aberdeen, as his prebend. This benefice was valued in the thirteenth century on 'the old assessment' (*antiqua taxatio*) at forty marks (£26 13s. 4d.). At Brechin, in the list of canonries in 1372, we find no notice of the bishop's prebend. But in 1435 we find the bishop required to pay ten marks of cope-tax 'because he is prebendary of Brechin.'[3] We find him also voting with the other members of the chapter at the election of a proctor, whose duties were to collect the revenues of 'the common churches.'

At Elgin the bishop was a canon and prebendary of Fothernays (Forres).[4] In choir he sat in the stall next but two from the dean. At Aberdeen, the bishop's choir-stall was also on the south side and separated from the dean by the intervening stall of the archdeacon. The Bishop of Ross was a canon and prebendary in his cathedral.[5] In a deed, dated 1227, we find the subscrip-

[1] See the interesting account in Mr. Capes' excellent work, *The English Church in the fourteenth and fifteenth centuries*, chapter xii.

[2] 'At Chichester the bishop . . . was formerly required to be installed as a prebendary before enthronement.' Walcott, *Cathedrali*, p. 33.

[3] *R.B.* i. p. 67. See also pp. 87, 88.

[4] *R.M.* pp. 73, 94, 107, that is, of the *lands* of Forres (*Ibid.* 361); for the *church* of Forres was part of the prebend of the succentor (*Ibid.* 92).

[5] Pope Alexander IV. writing to the bishop in 1255 says: 'Quem (episcopum) voluisti in Canonicorum ejusdem ecclesie numero computari.' Theiner, p. 69.

tion, 'Robert, Bishop of Ross and Canon.'[1] In 1255, if not earlier, his prebend was all the tithes of the churches of Niger (? Nigg) and Tharbent (? Tarbat).[2]

A charter, dated 1243, preserved in the Register of the Priory of St. Andrews (p. 305), is subscribed by Ralph de Lambley, as 'episcopus et canonicus Aberdonensis.' Similarly, we find in the same Register (p. 327), Andrew de Moravia, Bishop of Moray, subscribing a deed in 1235 in the form, 'Ego Andreas, canonicus et episcopus subscribo.' In like manner the Bishop of Caithness (according to the foundation of Bishop Gilbert, *c.* 1225) was a canon of the Cathedral at Dornoch.[3]

Though, as a member of the chapter, the bishop was of inferior rank to the dean and to the three other *principales personae*, his spiritual pre-eminence was clearly recognised. Even in the signature of deeds, charters, and such like documents, the bishop, as in the cases just referred to, subscribes before the dean. And in the services of the Church the customary reverences, or bowing of the head, made to the dean in the absence of the bishop, are transferred to the bishop when he is present. Similarly, in the saying of the services of the canonical hours in the cathedral, the *confiteor* at prime and compline, and the benedictions given at the reading of the lessons were said by the dean only in the absence of the bishop. Again, the statutes of the cathedrals are always enacted and promulgated by the bishop with the advice and consent of the dean and chapter. The position of the bishop in these five cathedrals was certainly anomalous, and did not commend itself generally. But it was not without certain advantages. The bishop would thus have an opportunity of being present at, and taking part in the deliberations of his council. He would certainly be more in touch with the leading clergy of his diocese than was possible when he only received resolutions or decisions at which the chapter had arrived. It is not improbable, though I am not aware

[1] *R.M.* p. 82.

[2] Theiner, No. clxxxii. At one time, however, Tarbat was in the patronage of Ferne Abbey.

[3] See *Origines Parochiales*, II. ii. 601.

that we have any positive evidence on the subject, that (as was true in similar cases in England) the bishop would retire from the meeting of the chapter when any question arose concerning the relations of the chapter to the bishop. The canons, however, may have well imagined that the presence of the bishop put them under a certain restraint, and interfered with the freedom of debate. It is observable that at Glasgow, where the statutes and customs of Salisbury were to a large extent adopted, the Salisbury arrangement, which gave the bishop a canonry, with its accompanying right to a seat in chapter, was not followed. In 1258 the Bishop of Glasgow 'gives and concedes to our Canons the liberties and customs of the Church of Salisbury.' But the canons, in accepting this concession, interpreted it to mean, 'all the liberties and customs which we may see to be expedient and advantageous to us.'[1] It is possible, however, that this feature of the constitution of Salisbury was not known to the Glasgow chapter. Certainly in the letter written the following year (1257) by the dean and chapter of Salisbury to the dean and chapter of Glasgow in reply to enquiries as to the constitution of Salisbury, there is no mention of the fact of the bishop being a canon.[2]

At Elgin the Bishop of Moray had for his choir-vicar the canon who held the prebend of Croyn.[3] And in a like spirit the dean was not required to appoint any choir-vicar, as the canon who held the subdeanery was regarded as fulfilling a vicar's duty.[4] Though the subdean was himself bound to keep residence under strict regulations, he was, like most of the other canons, required to furnish a choir-vicar.

The Meetings of the Chapter.

The control and management of the common property of the cathedral was in the hands of the corporation, or *collegium canonicorum*, that is, the chapter. Every member of the chapter had a personal interest in the finance of

[1] *R.G.* i. 166-167.
[2] *Ibid.* 169.
[3] *R.M.* pp. 107, 108.
[4] *Ibid.*

the corporation ; and every member was entitled to express his opinion on all questions as to the disposal of the lands, and other revenues of the cathedral. Hence the meetings of the chapter were convened with much attention to certain formalities, intended to secure due notice to all concerned.

The most important chapter in the year at Glasgow was that held at the season of Whitsunday. It was appointed in a statute of the year 1266 that every canon was bound to be present, and that, for this meeting of chapter, no citation was necessary. The canons were required to assemble at Glasgow on the eve of Whitsunday (*in vigilia Pentecostes*), and to remain for three days, at least, to treat of the affairs of the cathedral. At this general chapter the distribution of the *communa*, in proportion to the length of the residence of each, was made to the canons. It was further ordained that, unless under the pressure of some unexpected emergency, this chapter was to be the time when the common seal of the chapter was to be affixed to all documents. The chapter seal was guarded with jealous care ; it was kept secure under triple locks, the keys of which were in the custody of the dean and two canons. And at no time was the seal to be used but on a resolution of the dean and a majority of the chapter.[1]

In the case of other meetings of the chapter for the transaction of important business, every canon had to be cited with due formality for forty days before the date fixed for the meeting. This was done by citing the canon at his stall in the choir. The frequent non-residence of the canons was provided for, at Aberdeen, by requiring each canon to appoint a procurator from among his fellows, who would look after his interests in his absence. As his vicar of the choir acted as substitute of the absent canon in regard of the services of the Church, so his procurator was authorised to act for him in the business transactions of the chapter. As might be expected, we find that the procurator selected was commonly one of the four dignitaries, whose residence could be more probably counted on than that of the other canons. At Aberdeen,

[1] *R.G.* i. 174.

in 1448, it was enacted that if a canon did not appoint a procurator he was not to be admitted to the choir or the chapter house; and if a procurator was not appointed within three months the canon was to be mulcted of the third part of his prebend for that year; half of the fine was to go to the 'fabric,' and half to the resident canons.

If the canon continued to neglect the statute, and failed to appoint a procurator, he was, without process of law, deprived of the whole fruits of his prebend till he made the appointment, and was reconciled after his contumacy.

It was an obligation on a procurator to be responsible to his canon's vicar-choral for his fee (*feudum*) or salary, and for his 'habit,' that is, surplice, black cope, and amess.

At Elgin, about 1488, similar stringent regulations were adopted for securing the appointment of procurators.[1] And it is obvious that if the business of the chapter, to be effective, required a majority of the votes of all the canons, absenteeism could paralyse the action of the chapter. The subscription of acts of chapter by proctors on behalf of absent members is not uncommon.

The weekly chapter, commonly held on Saturday,[2] was mainly for disciplinary purposes. Irregularities in the conduct of the canons and choir-vicars were liable to review and censure; and defects and neglect in the performance of the service of the church were noted, and punished sometimes by a fine. At Aberdeen the fines of the choir-vicars, for not being in tune, are specified.[3] If a choir-boy was absent he was to be whipped (*disciplinetur*) for the first and second offence, and expelled for the third. At Elgin the vicars-choral were, in some cases, liable to the scourge to be applied to them by the subdean as they lay prostrate[4] in the chapter house. In other cases, as when any of them was absent from matins or high-mass on ordinary week days, he was required to sing a whole psalter[5] before he received his allowance of food. For a like offence on certain feast days, a whipping was to be added to the

[1] *Reg. Morav.* p. 266.

[2] *Reg. Aberdon.* ii. 64; *Reg. Glasg.* ii. 612. [3] *Ibid.* 62.

[4] Perhaps rather *kneeling*, a sense in which *prostratus* is often used.

[5] 'Psalterium' is sometimes used for the Seven Penitential Psalms.

singing of the psalter. The canons who drew up the statutes were careful to exempt themselves from corporal punishment.[1]

It is, perhaps, deserving some words of comment that we find James II. as a canon of Glasgow in 1450,[2] and that James IV. is found, when in his seventeenth year, to be a canon of the same cathedral. In a charter, dated 1489, 'in the second year of our reign,' confirming the privileges and liberties of the Church of Glasgow, the king declares his special devotion towards 'the blessed confessor, St. Kentigern, patron of the Church of Glasgow, in which we are a canon.' The distinction of a canonry being conferred on some youth of a noble, or royal house, was not very uncommon on the Continent. But it was little more than a canonry in name. A vote in chapter was not allowed in such cases. Sometimes the holder of the canonry was admitted to minor orders. Sometimes, the distinction being purely honorary, laymen of rank held canonries in various cathedrals. The King of France was a canon of Poictiers, Chalons, Sens, Anjou, and Tours. The King of Spain was a canon of Burgos, and Leon. The Emperor was a canon of Aix-la-Chapelle, Strasburg, Liege, Bamberg, Cologne, Utrecht, and Spires. In the case of monarchs holding canonries, some divines maintained that the unction received at their coronation conveyed a kind of *sacerdotium*; but this theory seems to have been an afterthought intended to satisfy scruples.[3] It is certain that sometimes canonries were held, *de facto*, by persons who had not been admitted to the priesthood or the order in the ministry required by deed founding his canonry; and we possess an ordinance of the chapter of Moray that such persons should not participate in the *communa*.[4] Indeed, as is well known, the Pope often

[1] *Reg. Morav.* 104.

[2] *R.G.* ii. 375. There is a charter of James III. (1475) in which he speaks of his 'singular devotion to Blessed Kentigern and his mother St. Teneu [St. Enoch] and towards the said Cathedral Church,' but he does not claim to be a canon. *Ibid.* 426.

[3] The monarch of England is to this day *ex officio* a canon of St. David's Cathedral.

[4] *Reg. Morav.* p. 269.

conferred canonries on mere children, who, however, did not share in the *communa* and were disqualified from voting at the election of the bishop.[1] In the visitation of Glasgow, in 1502, we find noted after the prebend of 'First Glasgow' the words 'juvenis est.'[2]

Discipline: the relations of Bishop and Dean.

It was the customary rule of the cathedral foundations that the government and exercise of discipline over the canons, vicars, clerks, and other officials of the cathedral should be exercised by the dean. To him the canons on their admission promised obedience, and even the archdeacon, who, as the bishop's officer, and not bound to residence, occupied a rather peculiar position, was, at Aberdeen in 1256, required to conform to the general rule.[3]

In the case of a chapter consisting of religious, like that of St. Andrews, it would seem that the archdeacons did not, till a very late period, stand related to the chapter by the obligations customary in cathedrals of which the chapters consisted of seculars. For we find Bishop Kennedy (1440-1466), with the assent of the chapter of his cathedral, ordaining that the archdeacons and also the chancellor, who appears to have been then a newly-created functionary in that diocese, shall hereafter always at their installation take an oath in the presence of the prior and convent that they will observe the rights, privileges, liberties and laudable customs of the Church of St. Andrews and the Order of the Canons Regular of St. Augustine, so far as they were affected by them.[4] In cathedrals of secular foundation the dean, always acting as the official of the whole chapter, administered the discipline of the establishment. The canons were jealous of the interference of the bishop in such matters. And in the Cathedral of Moray they seem on one occasion to have objected to the bishop attempting to deal with discipline, not only in the cathedral itself, but even with reference to the parish churches that formed the prebends of the

[1] See *Sext. Decret.* lii. i. tit. vi. c. 32.
[2] *Reg. Glasg.* ii. 611.
[3] *R. A.* ii. p. 43.
[4] *Reg. Prior. S. And.* p. 425.

canons. The contest was so sharp that the matter was appealed to the Apostolic See. The Pope remitted the investigation and termination of the dispute to the Bishop of Brechin and his archdeacon. In 1260 the judges-delegate gave their decision. The Bishop of Moray declared that by the common law of the church he was bound to correct excesses when they came to his knowledge, 'lest the blood of offenders might be required at his hands,' and this contention was admitted by the judges. The bishop, they declared, was entitled to hold his visitation of both the cathedral and the prebendal churches. And in the case of offences of the canons and others at the cathedral, the bishop was entitled to fix a limit of time within which the dean was bound, under canonical censure, to rectify the faults complained of. Here, as in other cases, the dispute was complicated by considerations which touched the pockets of both parties. If the bishop was entitled to visit, was he entitled to demand procurations? The judges again gave judgment in favour of the bishop.[1]

It must be admitted that the cathedral clergy of Moray had something to say on their own behalf. The foundation of Bishop Brice had been modelled on that of Lincoln, and in the constitution of the English cathedral it was provided that prebendal churches should be free from all *episcopalia*, a term in which procurations were included.[2]

It is easy to understand how, in a time when laxity of morals was not uncommon among even the dignitaries of the Church, there would be a strong desire on the part of the chapters to free themselves, as much as possible, from the inspection of the bishop. In the middle of the fifteenth century, John de Crannoch, an able and active prelate, had much trouble in enforcing an ordinance, though supported by a Bull from the Pope, for the payment of the cope-tax.[3] A notarial instrument preserved in the Register of Brechin[4] presents us with a

[1] *W.C.* i. 742. [2] *Ibid.* 537.

[3] Every canon on his admission was required to present a handsome cope to the cathedral vestry or (at a later time) to pay a sum of money of equivalent value.

[4] Vol. i. pp. 121-5.

curious picture of a scene in the chapter of Brechin in the year 1448. The relations of the bishop with some of the members of his chapter had been, to say the least, very unsatisfactory. The archdeacon had incurrred excommunication for laying violent hands on the bishop, and the bishop now called on the chapter to give effect to the excommunication. It is evident that the sentence had been hitherto made light of. The bishop then, in the face of the chapter, admonished the dean to remove his concubine from his house, and to avoid associating with her for the future, under the penalty of forty pounds of Scotch money. A glimpse like this of the actual state of affairs on this occasion, finding its place among the dry records of the business transactions of the chapter, makes us understand some of the reasons that probably stimulated the desire to be exempt, as far as possible, from episcopal supervision. But what shall be said when the guardians of morals are themselves suspected, or notorious evil livers? It was not long after this incident that the conduct of some occupying even the high dignity of bishops might well force one to ask,—

'Quis custodiet ipsos
Custodes?'

In the Cathedral of Ross, the dean's authority was more restricted, and in the exercise of discipline did not extend to the canons. It was expressly ordained that the faults (*excessus*) of the canons should be corrected by the bishop, and those of the vicars by the dean or his deputy. Even as regards the control of the vicars, if the dean was negligent in correction the bishop could act, and there was an appeal to him from the dean.[1]

It should be remembered that, if the bishop had the right to investigate into the affairs of the cathedral and to visit its members with a view to exercising discipline, the chapter was entitled to send a monition to the bishop, 'as sons to a father,' if they were aware of culpable conduct on his part. There is a case on record

[1] Theiner, p. 70.

where the misconduct of a bishop took the form of assigning church possessions and goods to members of his own family without the consent of the chapter. The chapter forbade the entrance of the bishop into his own cathedral. He defied them, and performed service after the prohibition. An appeal was carried to Rome, and the result was that the action of the chapter was sustained, and the bishop compelled to make restitution to the chapter.[1]

The prebends of the canons were ordinarily derived, as has already been stated, from the revenues of one or more parish churches;[2] but occasionally we find the income of the canon drawn from other sources. At Brechin there was a canon known as the pensionary, who does not appear to have held a parish church, and whose income was perhaps derived from the rent of lands. Again, in the Cathedral of Moray there was a canon holding what was known as the 'One Hundred Shilling prebend' (*C. solidorum*). He said masses for the souls of deceased bishops and canons; and his prebend was a fixed charge on the altarage of St. Giles' Church in Elgin. Apparently he was not required to appoint a vicar of the choir.[3] At Aberdeen the prebend of the chancellor seems to have originally been the tithe of the fishery of Palgoueny (Balgowney), to which in 1256 was added, because of its insufficiency, the church of Brass. In the same cathedral the canonry which took its name from Deer drew its prebend in the shape of a pension of twenty marks paid annually by the Abbat of Deer.[4]

Our information with respect to the constitution of the two cathedrals with monastic chapters is very scanty. The internal regulations and arrangements of the priory at St. Andrews and of the monastery at Whitherne would be in accordance with the rule respectively of Austin canons and of Premonstratensians. Attention may here be called to the fact that the constitution of Dunblane was in 1235 on the verge of a change from a chapter of secular canons to

[1] See *C.P.R.* i. 522, 4 Kal. Dec. 1290. The Bishop was Robert, Bishop of Ross.

[2] In Moray there were several canonries, the prebends of which were each the free revenues of two or even three parish churches.

[3] *R.M.* p. 91. [4] See *R.A.* ii. pp. 39, 40.

a chapter of canons regular. Theiner supplies us with a brief of Gregory IX., addressed to the Bishops of Glasgow and Dunkeld, recounting how the Bishop of Dunblane when at Rome had given a pitiable account of the condition of that bishopric and the cathedral church. The revenues of the see had become so reduced that the income was not more than sufficient to support the bishop for half the year, and the bishop had reported that the see had been vacant for nearly ten years because no fit person could be found to bear the burden. There was no college of canons. The church was unroofed, and the divine offices were celebrated in the desolate building by a certain country chaplain (*capellanus ruralis*). The Pope directs that one-fourth of the tithes of all the churches of the diocese should be assigned to the bishop, out of which, after a fitting part had been reserved for himself, he might apportion revenues to a dean and canons. If this could not be done without grave scandal the episcopal see was to be removed to the monastery of St. John of the canons regular in the same diocese. In that case an income for the bishop was to be provided from the fourth of the tithes of churches held by secular persons, and the canons regular were to be granted the right of electing the bishop when vacancies occurred. As the chapter of seculars is subsequently found here we may infer that the funds for the bishop, dean, and chapter were found to be forthcoming.[1] And by the energy and zeal of the new bishop, Clement, a Dominican Friar, the exquisitely beautiful building (lately restored) on the bank of the Allan Water was erected.

The essential difference between the secular and the monastic canons was that while each of the former possessed his separate prebend and lived in a separate house, the latter lived in community and were provided for out of the common funds. Again, as the appointment of the secular canons was ordinarily in the hands of the bishop, episcopal influence would naturally be greater both in the chapter and in the diocese generally than in the case of dioceses with monastic chapters.

[1] The monastery of St. John here referred to was that of the canons regular at Inchaffray.

At St. Andrews a long succession of papal confirmations addressed to the prior and convent declares, 'It shall be lawful for you to place four, or three at the least, of your canons in your churches, of whom one shall be presented to the bishop of the diocese with the object of being granted the cure of souls.'[1] If I interpret this provision correctly (and I must acknowledge some hesitation as to what was intended by the words), it would seem that instead of sending to the churches in their patronage secular priests to serve the cures, either as chaplains or perpetual vicars, the canons of St. Andrews might, if they thought fit, present to the bishop one of their number who should be admitted to the pastoral charge of the parish, but in that case he was to live with three, or at least two, others of the canons, so as to preserve, one may conjecture, something of the community life. This series of confirmations of possessions, rights and privileges extends from Lucius III. in 1183 to Innocent IV. in 1248. If this privilege was utilised by the canons of St. Andrews it is easy to picture the unusual feature of some country parish with its little group of canons regular settled down presumably in the manse.

The free election of both prior and bishop was secured (as far as the Pope's authority could secure it) to the canons of the priory.

The Secular Canons' Houses of Residence.

Information as to the arrangements for the building and assignment of the canons' houses, built always in proximity to the cathedral church, is scanty. In the earliest of the statutes of Aberdeen which have come down to us,—those enacted by Bishop Peter de Ramsay in 1256,—we find a house for each of the thirteen canons (including the bishop and the dean) already in existence. Each canon had a toft, croft, and suitable residence (*honestum edificium*) within the bounds of the cathedral close (*infra cepta claustri*).[2] The gardens and crofts were of sufficient size to make it worth while to record that they were to be free of tithe.

[1] *Reg. Pr. St. Andr.* pp. 61, 65, 70, 75, 79, 101.

[2] *Regist. Aberdon.* ii. 41.

At whose cost the houses were originally erected we are not informed. But it is most probable that each prebendary had to bear the expense of building in the close the house which was attached to his prebend. And perhaps some arrangement was made for distributing the cost over a succession of occupiers. At all events at Glasgow a device of this kind was adopted. In 1256 it was enjoined that every canon of Glasgow should have his own dwelling, but (differing here from Aberdeen) it was enacted that no dignity or prebend should have any particular house permanently annexed to it. On any canon resigning, or dying, the house he had occupied should be assigned by the bishop, with the advice of the chapter, to the canon on whom he thought fit that it should be bestowed, on the condition that the new occupier should pay to the canon who had resigned, or to his assignees if he were dead, a certain moderate sum of money in proportion to the expense originally incurred in the building of the house. In like manner the new occupant was entitled to burden his successor in a part of the sum, that part to be determined by arbitration.[1]

In 1366 we find an enactment requiring the several canons at Aberdeen to make a sufficient enclosure of their houses and gardens in front and at the sides, and those who had ground (*parca*) at the back were bound to enclose it also.[2] By the year 1448 both the houses and the boundary-walls of the gardens had fallen into disrepair, and it was enjoined upon the canons to put them into order within the space of a year, under a penalty of twenty shillings, a penalty which was to be doubled for every year of neglect. As each house and garden was separated from the neighbouring house and garden the repair of 'mutual walls' was a trouble then, as it still sometimes is in Scotland, but the difficulty was got over in an ingenious way, for the details of which the reader is referred to the Register of Aberdeen.[3]

There was no house of residence for the prebendary of Methlach in the year 1376. But, the holder of the prebend having expressed to the bishop a great desire to make personal residence at the cathedral if he could have

[1] *Regist. Glasg.* i. 179. [2] *Regist. Aberdon.* ii. 58. [3] ii. 75-76.

a suitable house, the bishop (Alexander de Kyninmund, the second of that name) granted a piece of land sufficient for a toft and croft, or garden, where a house might be erected.[1] It seems that, in this case, there was no obligation on the canon to build the house, and his making it over for the use of his successors was regarded as so great a boon that it was ordained that each of them, for all time coming, should pay ten shillings a year for the celebration of the anniversary of the canon who built the house. A similar grant of land on like conditions was made in the same year to the prebendary of Ellon.[2]

At Elgin we find a chanonry, college, or cathedral close at an early date. In the second half of the thirteenth century a manse was added for the prebendary of Duffus. One, John Spalding, who at that time held the prebend, bought a piece of ground, and built thereon a manse within the chanonry. He made it over to his successors in the prebend on the condition that, at entrance, each of his successors should subscribe an oath to keep the house in good repair, and should pay annually to the chapter twenty shillings sterling for distribution among the ecclesiastics who were present at his (Spalding's) anniversary.[3] In this case, as in the two cases at Aberdeen, the gift of the house formed a kind of endowment 'pro anima sua.'

It would seem that the destruction of the cathedral and the houses of the chanonry, by the Wolf of Badenoch, was not, at least so far as the residences of the canons were

[1] *Regist. Aberdon.* i. 192-194.

[2] *Reg. Aberdon.* i. 119-121. In 1462 we find the prebendary of Clatt granting to the vicars of the choir at Aberdeen an annual rent (redditus) of 13s. 4d., to be raised out of two houses built 'super mansum tuum' within the chanonry. This suggests that the prebendary had let the manse with this charge upon it. But we lack information which would clear this point. The two houses were lately built by him 'super mansum suum.' Does this mean that he added a storey and built a house at the back? See *Reg. Aberdon.* i. 291. Compare what is said hereafter on letting houses at Elgin.

An account of the chanonry of Aberdeen, and of the remains of the prebendal manses as they were in 1724, will be found in William Owen's *Description of the Chanonry, Cathedral, and King's College of Old Aberdeen.*

[3] *Reg. Morav.* p. 145. Precise regulations are laid down as to the mode in which these twenty shillings were to be divided.

affected, repaired for a very long time. Certainly the acts of the General Convocation[1] of the canons, as late as 1489, reveal a chanonry devoid of many of its manses. The convocation peremptorily ordered that thirteen prebendaries, including the archdeacon and the succentor, should at once 'erect, construct, build, and duly repair their manses, and the enclosures of their gardens within the college of Moray,' while the remaining canons were ordered to repair all houses and enclosures that were defective. The performance of this order was enforced by fines, increasing in extent on delay, and enforcible by sequestration of their prebends. This incident, though very late in the history of the Cathedral of Moray, is mentioned here as clearly pointing to the existence of an obligation on the prebendaries of Moray to build their residences in the close, just as there was an obligation on the rectors and vicars of parishes to build a parochial manse.

The same acts of the General Convocation forbid the prebendary letting his house to any but another canon, unless the proposed tenant has been judged by the dean and chapter to be a fit person to live within the college, and makes oath that he will be obedient to the dean and chapter: and, even with these precautions, the house is to be let for one year only. The boundary wall of the chanonry, or college, and its 'ports' had to undergo considerable structural changes.[2]

A statute of the thirteenth century, applying to the manses of the parish clergy, enjoins that 'the utensils' should be left in the house, when the manse passed from one incumbent to another.[3] The same rule seems to have applied to the manses of the cathedral close. Both at Aberdeen and Elgin we find lists of the articles of furniture which were to be handed on from one canon to another. There is a close resemblance between the ordinances of the two cathedrals, though the inventories differ in some minor particulars. Among other things there was to be a good table on trestles, a basin and ewer,

[1] This expression seems used to distinguish a chapter summoned with all the formalities from the ordinary Saturday chapter for disciplinary and administrative purposes.

[2] *Reg. Morav.* p. 268.

[3] *Stat. Eccl. Scot.* ii. 36.

towels, one silver spoon, a drinking-cup or goblet, with a lid. In the bedroom there were to be the bed (*le couche*) with a tester, a pair of linen sheets and two blankets. In the kitchen there were a brass pot, the chain which is called the *ketilcruke*, a pestle and mortar, and a variety of dishes. It would appear that the clergy brewed their own beer, for it is assumed that every house would have its *brasina*, and its furniture in vats, barrels, etc.; and the apparatus for brewing is specified with considerable particularity.[1]

The Building and Upkeep of the Fabrics.

We possess but little light as to the sources from which the cost of the beautiful and sometimes splendid structures of our cathedral churches was defrayed. In some cases there is evidence that individual bishops expended large sums on this object from the revenues of their sees.[2] The architectural designs were commonly planned on a great scale; while many years, and in some cases even centuries, intervened between the inception and the completion of the work. In many instances parish churches, that is, the free revenues after the payment of a vicar, were granted 'ad fabricam.' Thus the Church of Forgrund in Fife, with its chapel of Adnathan, was granted by Sir Alan de Lascelles *ad fabricam in perpetuum sustinendam* of the cathedral at St. Andrews.[3] Kings and great nobles often granted the right to take timber (*meremium*) from their woods, and stone from their quarries. The offerings of

[1] *Reg. Aberd.* ii. 85. Compare *Reg. Morav.* 367. It is also worth while to compare the rule as to the utensils (heirship goods) which were to be passed on in the case of a civilian inheriting a house, as will be found in the *Leges Burgorum* (*Acts of Parliament of Scotland*, i. p. 44). The three documents have several points of resemblance.

[2] See, for example, the instance of 'magnifica liberalitas' of the Bishop of Aberdeen in 1366, which called forth a grant from the canons of 60 lib. a year for ten years towards the completion of the cathedral. *Reg. Aberd.* ii. pp. 59-60. The building or restoration of Dunkeld Cathedral was largely due to the munificence of individual bishops; Robert de Cardny deserving special mention. See Myln's *Vitae Eccl. Dunkelden. Episc.*

[3] *Reg. Priorat. S. Andree*, 174.

the faithful were sought; and sometimes these were stimulated by the grants of indulgences from Rome. Thus, when towards the close of the fourteenth century, the nave of the Cathedral of Aberdeen showed the imperfection of the mason-work, and had to be completely rebuilt, Clement VII. (anti-Pope) granted large indulgences to those who, being penitent and confessed, would lend helping hands (*manus adiutrices*) to the work of restoration.[1]

Collections for the building of a great cathedral were not necessarily confined to the parishes of the diocese of which it was the mother church. Thus, in the thirteenth century, there was a synodal statute of the diocese of Aberdeen directing that on every Sunday from the beginning of Lent to the first Sunday after Easter, that is, for eight Sundays, the building of Glasgow Cathedral should be brought before the people of every parish in the diocese of Aberdeen immediately after the gospel at mass, together with a statement of the indulgence granted to contributors to that great work.[2] And no other collections for charitable objects were to be permitted in the churches during the time specified.[3] Indeed, if I interpret the statute correctly, it would seem that money bequeathed (indefinitely) for pious objects, and the goods of persons dying intestate in the diocese of Aberdeen were, at the period when the statute was promulgated, made over to the building of Glasgow Cathedral.

The great year of the jubilee under Nicholas V. (1450) was by the favour of the Pope made serviceable to the Cathedral of Glasgow. Its advantages might be had by those unable to visit the Holy City if, penitent and confessed, they visited the Cathedral of Glasgow and offered a sum equal to one-fourth of the cost of a journey to Rome.[4]

[1] In some cases an indulgence of seven years and seven *quadragenae* of enjoined penance. See the bull of 1379 in *Reg. Aberd.* i. 133. Two years later the same pope granted four years and four *quadragenae* to those who would visit and give alms to the fabric of the Church of St. Andrews. *Cal. Pap. Reg.* (Petit.) i. 244.

[2] *S.E.S.* ii. 25.

[3] *Ibid.*

[4] *Reg. Glasg.* ii. 380-383.

THE ARBUTHNOT PRAYER BOOK

Written about 1420, showing a figure of St. Ternan

Size of page, 11 inches by 7¼ inches.

One-third of the offerings went to the reparation of the cathedral.[1]

After the wanton and disgraceful destruction (1390) of the cathedral and of eighteen manses of the canons at Elgin by Alexander, Earl of Buchan, 'the Wolf of Badenoch,' the bishop, broken down by old age and sorrow, appealed in vain to the king (Robert III.), on the occasion of his coronation, for redress. Shortly after he addressed to the king a dignified and pathetic letter supplicating that the malefactors and incendiaries might be compelled to rebuild the ruined fane, the 'gloria regni et delectatio extraneorum.'[2] The king was, perhaps, powerless to cope with his savage brother. But the Church took action. The principal culprit was excommunicated, and absolved only on the condition that he would make satisfaction to the Church of Moray. There do not appear to be any records of the nature of the satisfaction made. There was probably little done by the earl who died in 1394. It is certain that in 1400 the bishop and the chapter were in great straits for funds to restore the burned cathedral. And an unusual expedient was adopted, based on provisions of the general Canon Law. The bishop called for a subsidy from the parish churches of the diocese which were not prebends or otherwise connected with the cathedral. It is certain that this demand was resisted, for we possess a letter of the bishop (dated 20 August, 1400) pointing out to the rector of Abirchirder that there were arrears for three years of what was technically called a *subsidium caritativum*, but which was in reality to be held as a debt, enforcible by sequestration of the fruits of the benefice. This subsidy was to be an annual moderate payment from the revenues of the parishes. At best it could have brought in very little.[3] Fourteen years later the need of funds for the work of restoration was still pressing, and the chapter adopted a rather questionable course. The see being now vacant and the canons assembled to elect a new

[1] One-third was to be given for the reparation of other churches and sacred places in the realm of Scotland, and one-third was to be sent to Rome for the basilicas and other churches of the city.

[2] *Reg. Morav.* p. 204.

[3] *Reg. Morav.* p. 213.

bishop, an oath was demanded from all the canons present that if any of them was elected to the bishopric he would grant one third of the whole revenues of the see, year by year, until the work of restoration was completed. Whether this agreement could be rightly regarded as a simoniacal contract one need not stop to enquire. As it turned out, one of the canons who had made the promise was elected.[1]

We possess an indication of another source of money for the restoration of the Cathedral at St. Andrews, which had been destroyed by fire. In 1381 Clement VII. granted to the bishop and chapter a year's first fruits of all benefices falling vacant in the diocese during the next ten years, a fitting portion of the income being reserved for the clergy who would serve the parishes.[2] But, after all has been said, the wonder remains. Where did the money come from for the building of these noble piles?

The Upkeep of the Ornamenta *of the Cathedrals.*

Any discussion of the inventories of the plate and vestments of the Scottish cathedral establishments belongs to the province of the ecclesiastical antiquary, and can find no place in these pages. But it is necessary to notice the ordinance common to all our cathedrals, or at least all of those whose statutes have survived, known as the cope-tax. It was enjoined that every canon, on his admission, should give to the cathedral a cope of silk, or of cloth of gold.[3] This afterwards came to be commuted to a certain money payment proportioned to the value of his prebend. From time to time we have indications that the rule was not consistently enforced; and then we find attempts at its revival, sometimes under penalty of sequestration of the fruits of the prebend. There were variations in detail, which need not occupy us. It is only necessary to say

[1] Possibly the doubtfulness of the canonical character of this proceeding induced the canons to meet on this occasion 'in quadam camera secreta in campanili ecclesie Moraviensis.' *Reg. Morav.* p. 217.

[2] *C.P.R.* iv. 244.

[3] The copes were used in processions, and at certain parts of the mass, on great occasions. See Frere's *Use of Sarum*, p. 24.

THE ARBUTHNOT MISSAL.

Written about 1480, shewing a figure of St. Vernan

Size of page 11¾ inches by 10¼ inches.

that after the tax was commuted to a payment in money the proceeds were expended in some cases not only on copes but in the purchase of chasubles, dalmatics, and other costly vesture for the celebration of the mass. The rule is referred to here as being an appreciable burden on the prebend.[1] The Scottish practice as to canons presenting copes to their cathedrals was the common practice in cathedrals south of the Tweed. The *jocalia*, a term including all kinds of church-plate, often of great value, seem to have been commonly the free gifts of ecclesiastical or lay benefactors.

At Aberdeen, in 1366, it was determined by the chapter that various fines inflicted upon the canons for disobedience to certain statutes should go to the maintaining 'the books, vestments and other necessaries of the church.'[2]

Cathedral Libraries.

Until the foundation of the Universities of St. Andrews (1410), Glasgow (1450) and Aberdeen (1495), each erected after the manner of the time, under the authority of Papal Bulls, such learning as Scotland possessed had its homes in the cathedrals and monasteries. Presumably each of the Scottish cathedrals had its library. That such was the case at Glasgow and Aberdeen we have positive evidence. The registers of each of these cathedrals contain catalogues of the books, and supply us with glimpses of what may be regarded as some of the library regulations. The inventory of books at Glasgow, in 1432, first records the service-books in use in the cathedral. These are, of course, of the usual kind. There were ten missals (some of them 'noted,' *i.e.* exhibiting the music to be sung) for use at the great altar and the altars of the side-chapels. Some of these were by the donors assigned for the use of certain specified altars. There was an Epistolar with the addition of the liturgical Gospels. Two large volumes contained the Old Testament. There

[1] For the rules of the cope-tax see *Reg. Brechin.* i. 66-68 ; *Reg. Morav.* 264 ; *Reg. Glasg.* i. 298, ii. 344 ; *Reg. Aberd.* ii. 70-71.

[2] *Reg. Aberd.* ii. 58.

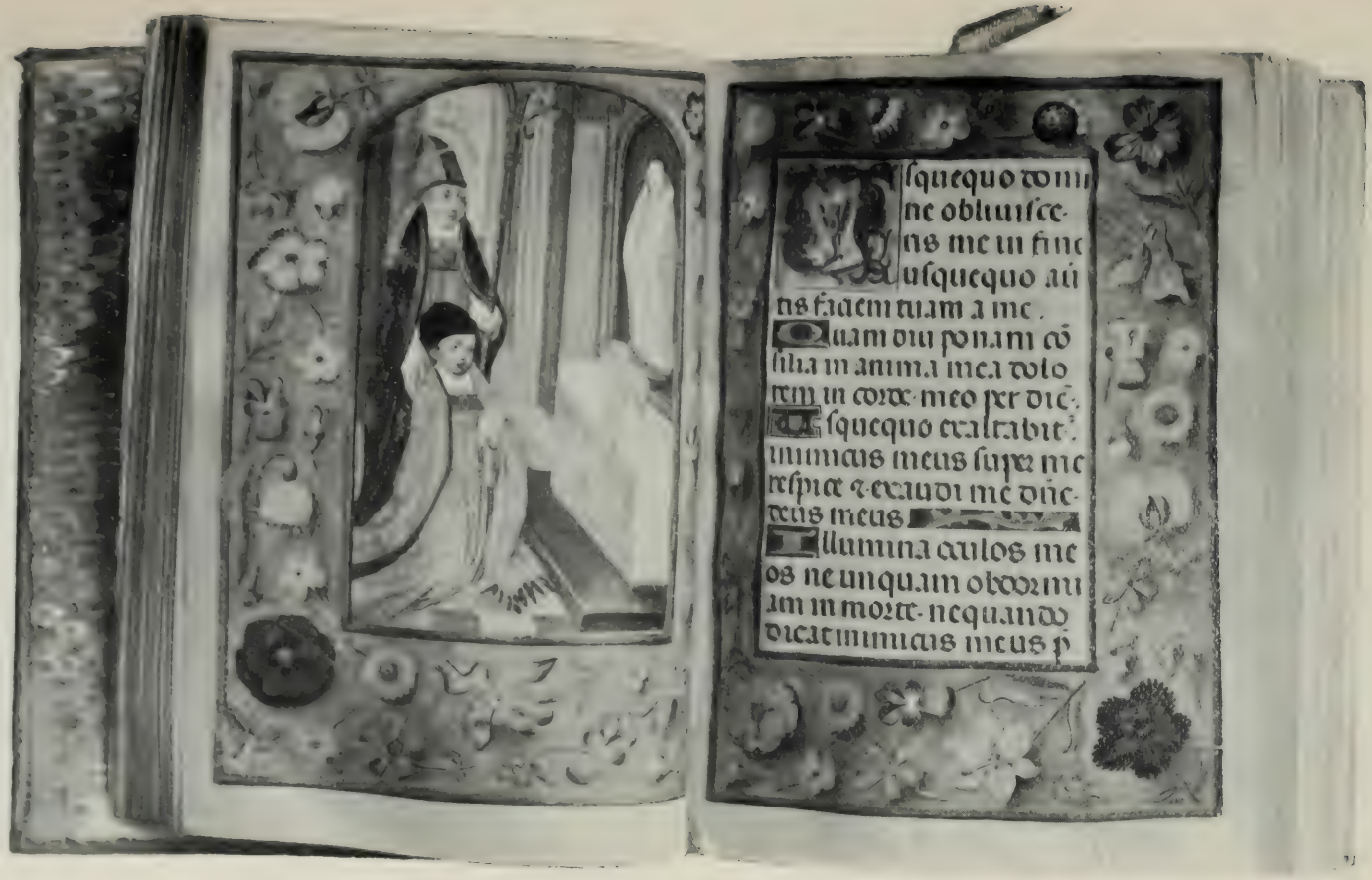
were two books of the *Legenda Sanctorum*. There were seven Breviaries, or Portifories, of which two were out on loan. There were five Psalters, six Graduals (four others were missing), seven Antiphonaries, five Processionals, of which one was in the hands of the binder, one Collectarium, one Ordinal, one Golden Legend, one volume of the Epistles of St. Paul, two Pontificals, each in two volumes. There was, besides, a Life of St. Kentigern and St. Serf, and—an unusual feature—there was, chained near the great altar, what seems to have been the great Latin Dictionary of John of Genoa known as the *Catholicon*.[1] Some of the office-books were assigned to the stalls of certain of the canons, and some were secured to them by a chain. In the case of the missals it would, of course, be possible to transfer some of them from one altar to another as the masses were said at various hours. But we are struck by the small number of books for the choir-services of the canonical hours, when we consider the large number of clergy who were required to attend. This points to the cost of producing such books, and falls in with the not uncommon regulation which required the vicars-choral to be able to say the service by heart.

Passing from the inventory of the service-books we find that the other books belonging to the cathedral were kept partly in cases, of which some were placed in the nave of the church, and partly in the library, where they were arranged on three shelves. The books described as illuminated,—'well illuminated' or 'illuminated in gold,'—were placed in the library, and from the rare notice that this or that particular volume was 'not chained' we may safely infer that the rest were secured from abstraction by the common device of attaching a chain to the cover.

In the cases outside the library there were some thirty volumes registered, beside 'numberless little books the names of which we do not know.' Within the library there were some seventy volumes.

The first extant inventory of the books at Aberdeen

[1] Some remarks on these books will be found in a paper of mine in the *Proceedings of the Society of Antiquaries of Scotland* (1898-9), vol. xxxiii. p. 322.



ABERDEEN BOOK OF HOURS, 1499.
Size of page, 5 *inches by* 4 *inches.*

was made at about the same time (1436), and shows us a somewhat larger collection. The Aberdeen library was particularly strong in treatises on the Canon Law. The contents of the two libraries presented many common features. The theology of the day, in the treatises of the great schoolmen, was largely in evidence. Aquinas, Duns Scotus, and other commentators on the Sentences, as might be expected, appeared frequently. Among the fathers we find Augustine, Jerome, Ambrose, Leo the Great, and Gregory the Great; among later writers Isidore, Bede, Peter Damian, Anselm, Bernard of Clairvaux, and Bonaventure. There were, of course, copies of the Holy Scriptures, sometimes in complete volumes, sometimes in various parts with or without commentaries. The Concordance of the Bible (no doubt that of Cardinal Hugo de Sancto Caro) was present to help students, and there was Nicholas de Lyra to comment and explain.

With the exception of Latin translations of Aristotle, the remains of pagan antiquity were few. There was a Valerius Maximus at Glasgow, evidently a popular book in the middle ages, as we find that there were at least fourteen editions put into print before 1490. We also find at Glasgow 'a book that is called Methamorphoseos,' which one may perhaps conjecture to have been some part or the whole of Ovid's work. A volume which is described in the inventory as 'liber gay crispy et salustij' was perhaps the *Catiline* or *Jugurtha* of Caius Crispus Sallustius.[1] The forged correspondence between St. Paul and Seneca, which Bishop Lightfoot assigns to the fourth century, was a favourite book in the middle ages, and each of the two libraries contained a copy. There was a copy of the favourite work of Boethius, *De Consolatione Philosophiae*, with the Commentary of the English Dominican, Nicholas Trivet.

Both collections suffered from books having been abstracted. The notices are of such a kind as to show that there had been catalogues before the inspections, the results of which are recorded in the Registers. Precautions

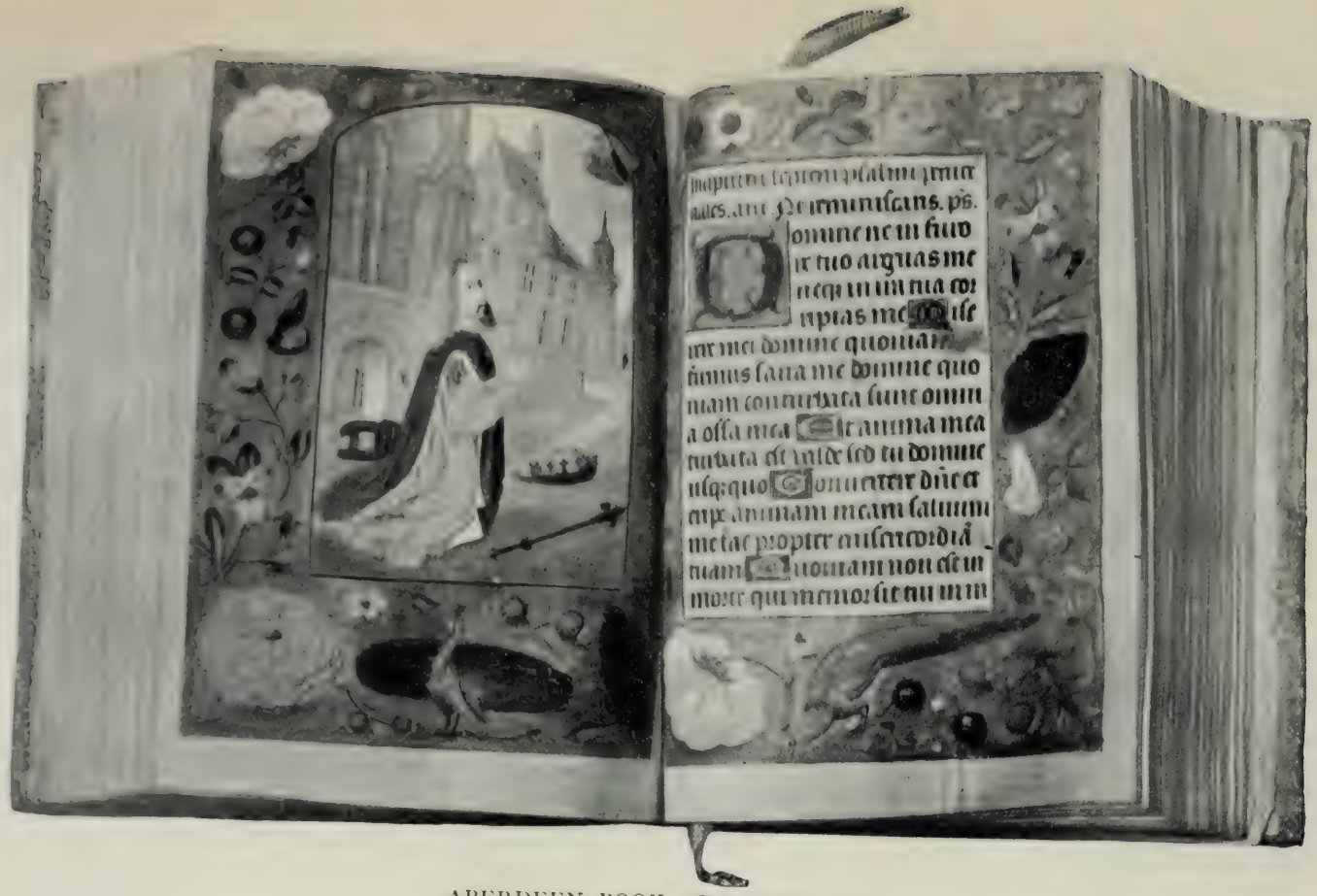
[1] Against this, however, it is to be said that the book is said to be 'in magno volumine,' and that the opening words are 'summum bonum.' But the volume may have contained other works.

were evidently necessary, and at Glasgow we find Master Alexander Lawder allowed to borrow a 'Speculum Judiciale' on condition of his leaving in pledge a copy of the 'Decretum' of Gratian, and promising to return the borrowed book when called for by the chapter. It was at the time when the Glasgow inventory was drawn up that a statute was passed by the chapter enjoining that every year at the general chapter at Whitsuntide certain canons should be elected for the purpose of comparing the charters, muniments and books with the lists that had been drawn up. At Aberdeen we find a list of the books in the cathedral library in the year 1464, which, on being compared with the earlier catalogue, shows some additions. As before, Canon and Civil Law can claim the larger proportion of the volumes. And of the few books belonging to these libraries which were borrowed, all (with one exception) are books on Canon Law. There can indeed be little reason for doubting that it was in the highly practical subject of the conduct and administration of law that the intellectual activity of the ablest of the Scottish ecclesiastics mainly exercised itself. Many of them had studied in the great schools on the Continent, and many of them bore the distinction of Bachelor or Doctor of Decreets, or of Civil Law. There were constant opportunities in the endless litigation of the church courts, and in conducting the appeals to Rome, for the remunerative display of wide knowledge and the subtlest ingenuity.

The chancellor of the cathedral was the officer responsible for the safe custody of the books.

The 'Annuale' of the Canons.

One of our thirteenth century statutes enacts 'that every priest, or clerk, passing to religion (that is, entering a monastery, taking monastic vows) shall have his *annuale*, even as others who die in the Lord.' The *annuale* was one year's revenue of the benefice from the date of the death of the incumbent. Whoever entered into the monastic life was regarded as having died to the world; and here it is declared that he should have the same privilege as those who had been cut off by death in the ordinary course.



ABERDEEN BOOK OF HOURS, 1499.

Size of page, 5 *inches by* 4 *inches.*

This privilege entitled a rector of a parish to offer as security for a debt, or to dispose by testament of, the fruits of his parish during his lifetime, and for one year subsequent to his death.[1] In 1161, Pope Alexander III. confirmed a statute of the chapter of Glasgow that the prebend of a canon deceased should, for a year after his death, go to pay his just debts, or be distributed among the poor. A little later (1177) the chapter passed an ordinance allowing the canon to dispose by will, or to grant before death, his annual to whomsoever he chose.[2]

In the first half of the thirteenth century the chapter of Moray gave expression to their sense of the hardship that arose when one of their number gave up his prebend to accept a richer benefice out of which an annual was due. He received no revenue from the prebend which he had resigned, and for one year he derived nothing from the benefice to which he had been advanced. They state that sometimes, under these circumstances, the clergyman was compelled to burden himself with debt, or to be in actual want. They therefore passed a statute which permitted a canon of Moray to retain the whole fruits of his prebend until he was entitled to receive the fruits of the benefice to which he was promoted.[3]

It would seem, from the statute of the chapter of Moray above referred to, that, at least in some cases, an annual was allowed, not only in the event of death, or of going into religion, but even of resignation.[4]

The general statute cited at the opening of this section certainly looks as if the provision applied to all persons holding benefices. Yet we need more information than we possess to adopt that conclusion as absolutely certain.

[1] See *S.E.S.* ii. 15. Statuimus etiam quod ecclesiarum parochialium rectores seu vicarii easdem ecclesias sibi commissas nullatenus obligare valeant, nec fructus earum ad ulteriora tempora vendere, aut quibuslibet modis alienare, nisi quatenus ad eosdem rectores pro se viventibus, aut suo annuali, poterint pertinere.

[2] *R.G.* i. 21, 40, 41.

[3] *R.M.* 97-98.

[4] *R.M.* 97-98. 'Ut quotienscunque hoc contigerit is qui ad beneficium aliquod vocatus fuerit, in quo *cedens*, vel decedens, vel ad religionem transiens annuale suum habuerit et optinuerit secundum approbatas consuetudines in ecclesia Scoticana,' etc.

If the rule applied to all there would perhaps be no need for the cathedral chapters to make a special rule to this effect applicable to the prebendaries. On the other hand, the chapter may have given expression to the rule as applicable to prebendaries *ad majorem cautelam*.

The rule of the *annuale*, as applicable to the prebendaries of the cathedrals of Moray and Glasgow, has its parallel in what was known in England as the *annus defuncti*. At the cathedrals of Hereford, York, Lincoln, Exeter, etc., not only the revenues of the prebend derivable from the benefice of a deceased canon, for a year and day from the day of his death, but also his share of the *communia*, were paid to his executors for the payment of debts, and for pious uses *pro anima ipsius*. At Hereford, and perhaps elsewhere, the same rule held good for a canon entering a monastery.[1]

The rule, as applicable to the beneficed clergy generally, survived in a modified form in Scotland after the Reformation in the 'Ann' or 'Annat.'[2]

[1] More, in detail, will be found in Bradshaw and Wordsworth's *Lincoln Cathedral Statutes*, i. 115; ii. 61, 88-89, 107.

[2] See *Act. Parl. Scot.* viii. 73. [Black's *Parochial Ecclesiastical Law of Scotland* (1901), pp. 218-25.]

THE PERTH PSALTER. *Calendar for August and September* (*very slightly reduced*).

CHAPTER VI

COLLEGIATE CHURCHES

A FEW words must be said on the Collegiate Churches of Scotland. Churches known as 'collegiate' were ecclesiastical corporations constituted (with due ecclesiastical sanction) much after the manner of the cathedrals of secular canons. With two exceptions, Dunbar and Bothwell, they all are later than the year 1400; after which date they become numerous. The years between 1440 and 1460 were particularly prolific in foundations of this kind, some thirteen or fourteen collegiate churches being erected in various parts of the country during those twenty years.[1] Similar foundations were made from time to time till 1545, when Biggar, in Lanark, closed the series. In all, from 1342 to 1545, some forty collegiate churches were founded, of which two-thirds belong to the fifteenth century.

It became a favourite expression of devotion on the part of great nobles, large land-owners, and sometimes kings or members of the royal family, to endow specially some church for the maintenance of divine service on a scale of completeness and ceremonial dignity that would have been impossible in an ordinary parish church. Lands, or the free revenues of parish churches (the patronage of which was in their hands) would be conveyed by the founders for the support of the new foundation. The clergy associated together would have, as in

[1] In 1471 an Act of Parliament, which forbade the annexation of benefices to bishoprics, abbeys and priories, expressly sanctioned the annexation when made to 'secular colleges.' *A.P.* s. ii. 99.

the case of the cathedrals, each his separate prebend. The head of the *collegium* was ordinarily styled the provost (*prepositus*); and these foundations are commonly referred to in ecclesiastical documents as *prepositurae*. Occasionally, as in the case of Dunbar, Restalrig, and the Chapels Royal, the head was known as the dean.[1] Under the provost or dean were a number of prebendaries known either as canons or chaplains. Their number varied with the wealth of the foundation. At St. Giles', Edinburgh, there were 16, including the sacrist and 'minister of the choir'; at Lincluden, 12; at Tain and at Crail, 11; at Crichton, 9; at Trinity College, Edinburgh, 8; at Yester, 7. At Roslin, Seton, Carnwath, Kilmun, and Dumbarton, there were 6. At Corstorphine there were 5; at Maybole and at Semple there were 3. Sometimes, just as in the case of cathedrals, a new prebend would be granted by some benefactor, and the number of chaplains or canons increased.

In a large number of cases two or more boy-choristers were to be maintained on the foundation;[2] and in a few instances provision was also made for the support of a number of almsmen.[3]

The provosts and prebendaries formed the corporations or chapters; and each corporation had its common seal. A certain measure of rank and precedence was given to the members of collegiate churches. And one can scarcely doubt that the honours bestowed on Trinity College, in Edinburgh, on its erection into a collegiate church by Queen Mary of Gueldres in 1462[4] stirred the provost, bailies, and councillors of the city to petition the Pope, some three years later, for the elevation of their grand parish church of St. Giles to a similar rank.

The then prevailing belief in the benefits of masses

[1] In the case of Trinity College (founded in 1462) the Archbishop of St. Andrews in 1526 annexed to the college the parish church of Dunnottar for the support of two new prebendaries, one of whom was to take rank next *below* the provost and to be called the *dean*.

[2] At Tain there were three boys; at Crail and at Biggar, four.

[3] At Lincluden, 24; at Trinity College, 13; at Biggar, 6, etc.

[4] The Bishop of St. Andrews' confirmation of the foundation is dated 1st April, 1462.

said for the departed had for long stimulated the foundation of chantry chapels in the cathedrals and greater parish churches. The same sentiments now moved men to the foundation of the collegiate churches, where the souls of the founders (whose bodies were often buried in the church of their foundation) and of the members of their families were ordinarily, by the foundation charters, secured a large amount of such benefits as were believed to be attainable by frequent prayers and masses or other rites on their behalf.

Trinity College Church, in Edinburgh, was specially founded for the weal of the souls of the royal family of Scotland. The royal foundress directed that her body should be interred in the church, and ordained that every day the priest who was appointed to celebrate mass, should at the close of mass proceed in his vestments to her tomb, sprinkle it with blessed water, and say the *De profundis* and certain prayers.[1] And it was carefully provided that 'anniversaries' should be duly celebrated for the queen and for her late husband. Similar injunctions are frequent in the charters of founders or benefactors of collegiate churches. Indeed, these collegiate churches may be regarded as dignified chantries for the souls of those who had founded and enriched them, with the addition that the saying of the canonical hours, *collegialiter*, was also commonly prescribed.

In some cases the patronage of the whole or of some of the offices and prebends was retained in the hands of the founder and his heirs and successors. The foundations in such cases enabled the family to appoint some of their own kin to places of dignity and emolument. This was so in the case of the collegiate church of Dunbar, where the patronage was retained by the Earls of March. In 1394 the Pope was petitioned on behalf of Columba de Dunbar, 'legitimate son'

[1] See *Charters relating to the City of Edinburgh*, p. 106. The 'isopa' mentioned in this passage was one of the names given to the *aspergillum* or 'sprinkler,' and does not necessarily suggest that the herb, hyssop, was employed. This remark is made because the word is rendered 'hyssop' by the editor of *Charters and other documents relating to the City of Edinburgh*, 1143-1540, p. 106.

of George, Earl of March, that he, aged fourteen, might be dispensed to hold a benefice without cure of souls. In 1413 the earl petitions the Pope that Columba, who had studied 'for many years at Oxford,' may retain the deanery, canonry and prebend in this collegiate church.[1] Dunbar had before this been held by members of the family. Waldeve, son of Earl Patrick, was rector of Dunbar in 1245.[2] Other instances of the appointment of members of the family of the founder could be cited. But this glimpse is sufficient to show that if religious sentiment was the primary motive in suggesting such foundations, these establishments were sometimes utilised in making provision for younger sons. I cannot recollect any instance in our Scottish records of the Pope interfering with presentations that were in lay patronage. And in this respect the collegiate churches, where the patronage of lay founders had been reserved, served as centres of lay influence in the ecclesiastical world of Scotland.

There was no uniform system for the constitution of collegiate churches, and the foundation-charters of each require a separate consideration. But the general principle holds good that those who contributed to the foundation had rights of patronage in the church. Thus, at St. Giles', Edinburgh, while the king retained the patronage of the provostship, having formerly had that of the parish church, the burgesses, who were generous benefactors, appear to have appointed to the other prebends. When the vicarage of Crail was converted into the prebend of the provost of the collegiate church in that town, the prioress and convent of Haddington, who had formerly presented to the vicarage, now presented to the provostship. The principal founder, William Myrton, who had endowed no less than seven chaplaincies, afterwards styled prebends, was to retain the patronage in his own hands during his life, while after his decease, it was to be made over to the extent

[1] Columba Dunbar was still dean in 1415, and petitioned the Pope for the addition of the hospital of Rothven (Rathven, in Banffshire). See *C.P.R.* (Petitions), i. pp. 601, 602, 610. Eventually Dunbar was appointed to the See of Moray.

[2] *C.P.R.* (Letters), i. 214.

of five out of the seven prebends to the bailies and community of the burgh, who had shown themselves obliging to Myrton in various ways, more especially by annexing the parish clerkship to the college.

In most, if not all the collegiate churches provisions are found for continuous residence, and for the cultivation of what was then reckoned a high class of sacred music. Not only were the clergy to be versed in the Gregorian or plain song, but in some cases they were also to be learned 'in discant and pricket-sang,' the harmony and counterpoint of the day. At Crail there was to be a song-school for the instruction of scholars.

The long inventory of the *ornamenta* and vestments at the collegiate church of Crail exhibits a very handsome and costly supply.[1] And, generally, it may be said that the collegiate churches aimed at, and in a measure attained a dignified and stately rendering of the services of divine worship.[2]

The charters of erection sometimes exhibit a vivid consciousness of the common immorality of the lives of the clergy, and in them we find rigorous prohibitions which might in earlier times have been assumed rather than expressly stated.[3]

As in the case of cathedrals, so also in the case of most of the collegiate churches, residences were provided for the prebendaries. At Bothwell, the noble foundation (1398) of Archibald Douglas, Lord of Galloway, the houses of the prebendaries and of some vicars-choral remained up to 1795, and when they were swept away

[1] *Register of Crail*, pp. 63-66.

[2] What Roslyn would have been, had it been completed, we may infer from the costly and elaborate details of the choir which still remain.

[3] In the foundation charter of the prebend of the aisle of St. Mary the Virgin, at Crail, the prebendary is forbidden to cohabit with prostitutes or spend his nights with married women ; but if he kept a concubine he was, after being warned three times, to lose the prebend (*Register of Crail*, p. 33). For ordinances of a like tenor relating to the collegiate church of St. Giles, Edinburgh, see Laing's *Charters of St. Giles*, pp. 113-227, and Appendix No. lxxiv. Similarly, the prebendaries of Trinity College were to be deprived of their prebends if after three admonitions they retained a concubine or a *focaria*. See *Charters relating to Trinity College Church*, p. 24.

their sites still retained the names of the 'prebends' yards' and the 'vicars' yards.'[1] The charters of other collegiate churches may also be referred to as pointing to the existence of residences (*mansiones, or mansa*) as, for example, Kirk of Field,[2] Restalrig,[3] Corstorphine,[4] Dalkeith,[5] and Roslyn.[6] It was in the manse of the Provost of Kirk of Field that Darnley, husband of Queen Mary, was lodged on the night of his murder ; but the buildings had been conveyed to the Provost and Magistrates of Edinburgh a few years earlier, on the triumph of the Reformers.

The histories of the cathedrals made it evident that the existence of residences for the prebendaries was no security that the prebendaries would reside. It was probably to protect her foundation from the evils which beset the cathedrals that Mary of Gueldres insisted that all the prebendaries of Trinity College 'should make personal residence, and by themselves and not by another, or others,' fulfil the obligations of their office. Fifteen days' absence was by the foundation-charter sufficient to render the office of provost or prebendary liable to become vacant, and after warning, a further absence of fifteen days was followed by deprivation *ipso facto*.[7]

[1] *Origines Parochiales*, i. 54. The prebendaries or chaplains of Hamilton were similarly provided. *Ibid.* p. 106.

[2] *Charters of Collegiate Churches in Midlothian*, p. xxxiv.

[3] *Ibid.* p. lix.

[4] *Ibid.* p. lxvii.

[5] *Ibid.* p. lxxxiv.

[6] *Ibid.* p. xcvi.

[7] *Charters relating to Trinity College Church*, p. 25.

CHAPTER VII

PARISHES AND THE PAROCHIAL CLERGY

1. *Origin of Parishes.*

In the scanty ecclesiastical records preceding the twelfth century we have no very clear evidence for the existence of what afterwards came to be known as 'parishes.' Record evidence for parochial divisions begins early in the twelfth century, and becomes rapidly abundant. The church of Ednam, in the Merse, is commonly, and probably rightly, regarded as the first instance on record of the process of founding a parish church. An Englishman, named Thor, had lands bestowed on him by King Edgar (1097-1107). He brought his lands into cultivation, built a church, and with the sanction of the king endowed it with a ploughgate of land.[1] This exemplifies what was doubtless the origin of parish churches. A landowner, desirous of securing the ministrations of the Church for his family, and his tenants and serfs, would erect a building and grant some land, commonly a ploughgate, for the support of a priest. And here is the origin of lay patronage. In the northern parts of Scotland, *e.g.* in the dioceses of Aberdeen and Moray, we find examples of the parish church being dowered with land to the extent of what is designated a half davach. Scholars are uncertain as to what the equivalent to this measure is in terms of

[1] A ploughgate (*carrucata*) was apparently an extent of land equal to 104 acres. See E. W. Robertson's paper on Scottish Measurements in his *Historical Essays*, pp. 135, 136. It is to be noted that 104 Scotch acres were equal to 120 English acres. See Lawrie's *Early Scottish Charters*, p. 257.

modern measurement.[1] The grant of land was supplemented by tithes, and thus the parish clergy came to be established. The Inquisition of David, Prince of Cumbria (afterwards King David I.), which may be dated about 1116, leaves no doubt that there had been already, within the bounds of the ancient diocese of Glasgow, churches endowed with the customary ploughgate.[2] After this the evidence becomes copious. It would be very rash to assume from our lack of clear evidence that there were no churches serving parochial purposes in the days of Malcolm Ceanmore or earlier. The Celtic monasteries had many offshoots, and little places of worship were scattered here and there. But I think that we are justified in believing that the *parochial system*,—the division of the whole country into districts, each assigned to the charge of a priest,—is an outcome of Anglo-Norman influence in the early part of the twelfth century.

In David's Inquisition the *word* 'parochia' is used, in a sense once common, for the bishop's diocese—'parochia Cumbrensis,'—and in this sense it still continued to be occasionally used in papal letters, bulls, etc. After that time it is ordinarily used in Scottish records in the modern sense of the word 'parish.'[3]

The building of churches all over the country was, of course, a matter that could not be effected all at once. As late as the time of Pope Urban III. (1185-87) there was a complaint of the scarcity of churches in the diocese of Glasgow, insomuch that children frequently died without baptism, and adults without confession and the *viaticum*.[4]

Mr. Cosmo Innes has pointed out that when a great

[1] For illustrations see the case of the parish of Abirnethy in Moray.

[2] 'In Pobles una carucata terre et ecclesia. In Treverquyrd una carucata et ecclesia. In Mereboda una carucata et ecclesia.' *Regist. Glasg.* i. 7.

[3] Ailred, in describing the work of St. Ninian, speaks of his dividing the country into *parochiæ* (*Vita S. Niniani*, cap. vi.); but this I dismiss as merely an importing of the language of his own day into times long past. Conceivably Ailred meant dioceses; but this would be equally remote from the truth of the case.

[4] *R.G.* i. 61.

CRUCIFIX OF COPPER OR BRONZE.

Enamelled in pale blue and light green

Found in Churchyard of Ceres, Fifeshire.

manor was subsequently split into several lordships, it was often found desirable that each should have its separate church. These new churches appear first as chapels of the mother church, but afterwards occasionally they obtain parochial rights.[1]

2. *Rectors and Vicars.*

Our records make us familiar with two classes of parish clergymen,—rectors and vicars. Rector was the name given to the holder of a parochial benefice when he enjoyed the whole of the original endowment and all other rights of the parish. He was, as the name implies, the spiritual ruler of the parish church and of the people residing in his district. Another name by which the rector was known is 'parson' (*persona*), which, when used correctly, was never applied to a vicar.[2]

The growth of the monastic orders and of cathedral corporations brought a new class of parish clergy into existence. It was a common thing for the founder,[3] or the patron of a parish, to make over his rights to a monastery or to the chapter of a cathedral. The most frequent form of this transfer was the conveyance of the parish to the monks or canons *in proprios usus*, as it was styled, that is, the whole revenues of the parish were conveyed to the corporation on the condition that they would provide for the spiritual ministrations. Monasteries and cathedrals were subjected to the temptation of retaining the main bulk of the revenues of the parish for themselves, while supplying a clergyman for the service of the parish at as cheap a rate as possible. Occasionally, when the parish lay in the neighbourhood of the monastery, one of the monks would be told off to administer the sacraments and

[1] *Orig. Paroch.* i. p. xxvii.

[2] I must not allow myself to be tempted into the discussion of the question, about which much has been written, as to how the term *persona* came to be used in this sense.

[3] The notice of the church of Ednam, referred to above, occurs in a deed of Thor's, conveying the church to the monks of Durham.

rites of the church to the parishioners.[1] In other cases they were required to appoint a resident priest for the purpose. The corporation succeeded to the rights and emoluments of the rector, while the deputy who did the work was styled the 'vicar.' Thus it came to pass that endowments originally given for one purpose were to a surprisingly large extent diverted to a purpose totally different.

In Scotland, in the twelfth century, the piety of kings and nobles took shape chiefly in the founding of monasteries. And on monasteries a large number of the parish churches were bestowed in even the earlier years of their histories. Thus, the foundation charter of the abbey of Lindores contains the grant of no less than ten parish churches, being, as the founder, Earl David, declares, all the churches he had in his gift in Scotland.[2] As time went on the grants of additional churches were made to the monasteries, and eventually the proportion of parish churches appropriated to them and to the cathedrals was very large. It has been estimated that in the early part of the sixteenth century more than two-thirds of the parish churches of Scotland were in the hands of the monasteries. I have not attempted to verify in detail the accuracy of this estimate, but I am inclined to believe that, if we add the appropriate churches of the cathedrals and collegiate churches, perhaps not less than three-fourths of the churches were in the hands of ecclesiastical corporations. By the royal founder of the great abbey of Arbroath there were conferred no less than thirty-three parish churches. The abbey of Paisley in 1265, as we learn from Pope Clement IV.'s confirmation, possessed twenty-nine. Holyrood had twenty-seven; Kelso, thirty-seven; and there was no considerable religious house in Scotland which was not possessed of parish churches in larger or smaller numbers.

The practice of the appropriation of churches to the

[1] For example, Abdie, in which parish the abbey of Lindores was situated, and which belonged to the monastery, appears to have been served in this way. See *The Chartulary of Lindores Abbey*, pp. lii-liii.

[2] *Chartulary of Lindores*, pp. 3, 9.

monasteries was attended by evils which roused the ecclesiastical authorities. The poorly paid vicar was very frequently illiterate. Pope Innocent III. complaining in 1216 of the miserably small allowance made to those who served the parishes in some places, declares that hence it has come to pass that where this practice prevails, 'scarcely one parish priest can be found who has a moderate or even any knowledge of literature.'[1] In England, local synodical enactments attempted to put some restraint upon the action of patrons; and the evil being felt in other parts of the Western Church as early as 1179, the General Council of Lateran passed a canon (No. IX.) declaring that 'For the future religious should not receive either churches or tithes from lay persons without the consent of the bishop of the diocese.' Thus, though the evil was already wide-spread, some slight check was put to its further growth. By the same canon the monastic communities were required to present priests to the bishops to be instituted to the parish churches in their possession. This latter provision was intended to prevent the practice of the monasteries delaying to supply a vicar so that the emoluments of the parish might, for as long as possible, be wholly absorbed by the house.[2] In 1207 Pope Innocent III. directed W[illiam Malvoisine], Bishop of St. Andrews, to put fit persons into churches belonging to religious who wilfully neglect to present to him chaplains or clerks within the canonical limit of time after the occurrence of a vacancy.[3] A little earlier Pope Lucius III. empowered Jocelin, Bishop of Glasgow, to fill up churches belonging to monasteries, if presentations were not made by the monastic patrons within three months from the occurrence of the vacancy.[4] Another bull of Lucius applies the rule to *all* patrons, who, if they did not present to the bishop fit persons for the benefices within three months, were for that occasion to lose the

[1] Unde fit ut in his regionibus pene nullus inveniatur sacerdos parochialis qui ullam vel modicam habeat peritiam literarum. *Decretal.* III. v. 30.

[2] See Mansi's *Labbe and Cossart*, tom. xxii. 223.

[3] *Calendar of Papal Registers*, i. 29.

[4] *Reg. Glasg.* i. 53.

right of presenting. The bishop was to fill the benefice, and no appeal was allowed.[1]

Another manifestation of the grasping spirit of the monasteries is to be found in their attempts to treat parish churches, of which they possessed only the patronage, as if they had been made over to them *in proprios usus*. When patronage only was conferred on a monastery its rights were confined to presenting to the bishop a fit person, who, when instituted, was entitled to enjoy the entire revenue of the parish. But there is ample evidence that the monasteries often bargained with their presentees for an annual payment to be made to them by him. In 1199 the Pope issued a mandate to Roger de Beaumont, Bishop of St. Andrews, to restrain such practices.[2]

As has been told, the monasteries and cathedrals were inclined to get the parochial work of their churches done as cheaply as possible. And in the thirteenth century we find the Scottish Church making a serious effort to secure for the vicars of appropriate churches a decent maintenance. One of the Scottish Synods of that century (the exact date has not been ascertained) passed a statute entitled, 'That vicars should have a sufficient maintenance.' It ran as follows: 'Moreover, we enact that vicars should have a sufficient and decent (*honestam*) maintenance from the revenues of their churches, since they who serve the altar should live off the revenue of it and of the church, so that the vicar's portion, free of all burdens, should reach the value of at least ten marks [£6 13s. 4d.], if the capabilities of the church suffice for this: provided that in the cases of churches of large revenues (*in pinguioribus ecclesiis*) portions be assigned to the vicars according to the measure of the revenues of the churches and the burdens which attach to them.'[3]

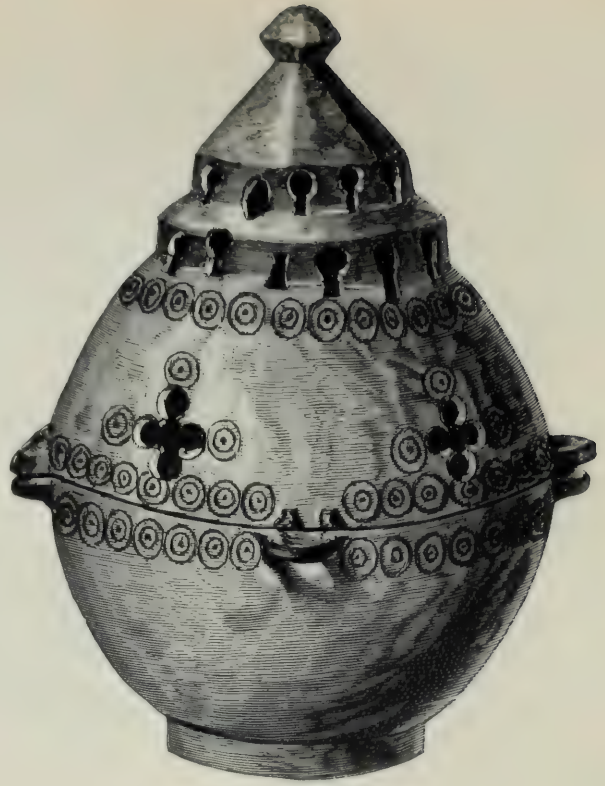
[1] *Reg. Glasg.* i. 54. [2] *Cal. Pap. Reg.* i. 5.

[3] *Statuta Ecclesiae Scoticanae*, ii. 12; *Reg. Aberdon.* ii. 8. Occasionally the alleged ground of the poverty of a monastic house was accepted by a bishop as sufficient excuse for his allowing a parish to be served by a chaplain (from the monastery) instead of by a vicar. Thus, in 1260, the parish of Alveth (Alva in Stirlingshire) was served by a chaplain (instead of a vicar), with the permission of the Bishop of Dunkeld, on account of the poverty of the abbey of Cambuskenneth, to which the parish was appropriated. *Regist. de Cambusk.* 24.

BIBLE

In the Cathedral Church of Glasgow: printed by Robert Barker in 1617

The original binding with clasps and chain.



BRONZE CENSER

Found under floor of Old Church of Garvock, Kincardineshire.

The vicar, when once he had been accepted and instituted by the bishop, was irremovable by the rector, or the corporation possessing rectorial rights. Hence his title, in technical style, was 'perpetual vicar.'

3. '*Ordinary Burdens*' *of Parishes:* '*Synodals*' *and* '*Procurations.*'

It will be observed that the Scottish statute already cited enjoins that the vicar's portion should be at least ten marks 'free of all burdens.' What is here pointed to was the obligation of every parish to make certain payments annually to the bishop. These were known as 'synodals' and 'procurations.' The synodal (*synodale* or *synodaticum*) was ordinarily a small annual payment, something of the nature of a feudal blench-duty, and little more than a recognition of superiority. As a recognition of the bishop's chair it was styled *cathedraticum*, a term frequent abroad, and occasionally used in Scotland.[1] The more usual term 'synodal' has been supposed to be derived from the payment being made on the occasion of the annual meeting of the synod of the diocese. The amount of the *cathedraticum* which the bishop was entitled to receive as 'honor cathedrae suae' was fixed at two shillings by an ancient canon embodied in the *Decretum* of Gratian.[2] And Honorius III., in 1218, repeats that two shillings should be paid to the bishop 'Synodatici seu Cathedratici nomine.'[3] So far as I am aware the only detailed list of the synodals paid in any Scottish diocese belongs to the diocese of Moray in the middle of the fourteenth century. There we find that two shillings is the usual payment, and is never exceeded except when two or more parishes are united.

[1] Pope Lucius III. (1181-1185) writing to Jocelin, Bishop of Glasgow, enjoins on beneficed clergy to pay to their bishop the *cathedraticum*. *Reg. Glasg.* i. 53. Again, when in 1315, when Robert, Bishop of Glasgow, permitted the monastery of Melrose to have a baptismal church in Kyle, he stipulates that one merk should each year be paid to him 'in signum subjectionis et nomine *cathedratici*.' *Lib. de Melros*, ii. 370.

[2] Pars II. caus. x. quaest. iii. § 1.

[3] *Decret. Greg. IX.* lib. i. tit. xxxi. cap. 16.

In three cases, presumably of very poor parishes, the payment is only one shilling.[1] The totals of the synodals in some of the deaneries of the diocese of Aberdeen, perhaps about 1275, are given in the Register of Aberdeen.[2] In the deanery of Aberdeen the total works out to exactly two shillings for each parish ; in the deaneries of Mar and Buchan it works out to slightly more than two shillings.[3] In the case of the creation of a new baptismal church in Kyle, in 1315, the Bishop of Glasgow, whether exceeding his legal rights or not, demanded a mark as *cathedraticum* to be paid 'at our chapter of Ayr' by half-yearly portions.[4]

Among other accusations made to the Pope against Walter, Bishop of Glasgow, in 1219, was the charge that he exacted four shillings from each church 'contra canonica instituta.'[5] It is extremely interesting to find an explanation of this in the Register of Paisley, where, in 1220, though exacting the four shillings as synodals from the appropriate churches of the monastery, he contents himself with procurations in alternate years.[6] In this case, at least, the bishop was rather generous than greedy.

'Procurations' due to the bishop were a much heavier burden. They consisted originally in the hospitable entertainment of the bishop and his attendant train when he came to make his visitation of the parish churches. In process of time this obligation was commuted for a payment in money.[7] The grievance, it can easily be imagined, was great. The Lateran Council of 1179 had attempted to mitigate the burdensome character of this impost by limiting the bishop's retinue on his visitation tours to thirty horsemen. The Council of

[1] *Reg. Morav.* pp. 364-365. [2] ii. pp. 55, 56.

[3] A glance at the record will show that it would be unsafe to rely on the accuracy of *minutiae*.

[4] *Lib. de Melros*, ii. 370. [5] Theiner's *Monumenta*, No. 29.

[6] *Reg. de Passelet*, 325.

[7] In a charter of William de Lamberton, Bishop of St. Andrews (1297-1328) it would seem that hospitality *or* money might form the procuration. He remits his procuration from Bathgate 'in esculentis et poculentis aut pecunia numerata.' *Reg. de Neubotle*, p. 126.

Westminster, in 1200, suggested the lower figure of twenty, in the phrase 'twenty or thirty.' In January, 1394-95, Robert Sinclair, Bishop of Dunkeld, visited the church of Alveth (Alva) with a retinue of fifty-six horses (*evectionibus*) and was entertained at the abbey of Cambuskenneth.[1] And as late as October, 1470, we find an appeal to the Pope made by the Abbat of Arbroath against Patrick Graham, Bishop of St. Andrews, for bringing with him in his visitations a retinue beyond that allowed by law, sometimes one hundred, sometimes two hundred horses.[2] Even a wealthy house like that of Arbroath might well complain. But even with the limitation of twenty or thirty the burden must have been heavy. The archdeacon was also entitled to procurations, and his deputy the dean of Christianity could, when visiting, make a similar claim. The Lateran Council, referred to above, limited the archdeacon's attendants to seven and the dean's to two.

When, in 1201, John, Presbyter Cardinal of St. Stephen on the Caelian, visited Scotland as legate of the Pope, it was obvious that complaints were made as to the excessive procurations demanded by the Scottish bishops, for we possess a very forcible letter addressed to them on the subject by the Cardinal. Their retinue, it would seem, exceeded the number allowed by the Lateran Council. He ordered that the rule should be observed, and directed that churches with a revenue of less than 30 marks should be conjoined with other poorer churches in supplying a procuration.[3]

In 1227 we find the powerful monastery of Paisley making resistance to the Bishop of Glasgow on behalf of the parish churches which had been appropriated to it. The bishop and the abbey consented to submit the matter in dispute to arbitration. And it was finally agreed that the churches in Strathgrif (Renfrewshire) which belonged to Paisley should provide two *hospitia*, that is, entertainment and lodging for the bishop on two occasions. Some of their other churches were required to supply one *hospitium* each; while in certain

[1] Cambusk. No. 17. [2] *Lib. de Aberbrothoc*, ii. 164.
[3] *Lib. de Calchou*, 341.

other cases two parish churches were to combine to provide one *hospitium*. Three churches, presumably on account of poverty, were exempted altogether. The arbitrators declared that in all cases it was not the monastery but the vicars who were to be held responsible for the fulfilment of the obligation.[1]

Occasionally a bishop would, of favour, remit procurations. Thus, in 1240, Ralph, Bishop of Aberdeen, with a view of creating a further inducement to the canons to reside at the cathedral, quitclaims for himself and his successors procurations due to him from the 'common' churches of the canons.[2] The *communia* would benefit to that extent. There were some six or seven such churches. Again, William Malvoisine, Bishop of St. Andrews (1202-1239), grants freedom from 'synodals, aids, and procurations' to the church of Athin, one of the appropriate churches of the monastery of Arbroath. There is reason to believe that this was for a consideration.[3]

I am unable to say at what date the actual entertainment of the bishop was commuted to the payment of a sum of money. But it would seem to have been before 1275, at least in the diocese of Aberdeen, for we have a record of about that date exhibiting in pounds, shillings, and pence the procurations of the Bishop of Aberdeen. The prevailing figure is two pounds: the highest (Kynkell) stands at £4 10s. 0d., the lowest (Kyndrocht) is 6 shillings. The total of the procurations of the diocese is given as £117 10s. 0d., a very appreciable addition to the bishop's income, when the purchasing power of money at that date is taken into account.

We have a detailed list of the procurations due to the Bishop of Moray in the middle of the fourteenth century. Each parish church paid £2, with two exceptions, where only £1 was demanded. A somewhat later list of procurations for Moray shows a few slight variations.[4]

[1] *Reg. Glasg.* 121. The arrangements as to the procurations of the appropriate churches of the monastery of Arbroath will be found in *Reg. Vet.* 116-118.

[2] *Reg. Aberd.* i. 15.

[3] *Reg. Vetus de Aberbrothoc*, 105.

[4] *Reg. Morav.* 363-366.

CHALICE OF SILVER AND WOOD

St. Mary's College, St. Andrews. 1567.

ALTAR CANDLESTICK

Found in digging foundation of Parish Church, Kinnoul, near Perth.

What has been said will suffice to explain an expression occurring not infrequently in Scottish charters, where it is laid down whether the rector or vicar of a parish church is bound 'respondere in episcopalibus.' The phrase refers to the payment of the bishop's dues, consisting of the synodal and the procuration.

'Procurations' and 'synodals' formed what were known as 'the ordinary burdens' of a parish church. But there were occasions when a call might be made by a bishop for a 'subsidy' or 'benevolence' (*caritativum subsidium*), not unlike the casualty known as an 'aid' (*auxilium*) claimed on certain occasions by feudal superiors from their vassals. A bishop, on his promotion, had heavy expenses to meet by reason, always, of his payments to the Pope, the cardinals, and the officials of the Roman *curia*, and frequently, of the journey with his retinue to the Apostolic See and his stay at Rome or Avignon. Hence a subsidy on such occasions was sometimes claimed from the parish churches. In a dispute (of uncertain date) between the monks of Lindores and the bishops of Aberdeen and Brechin, in whose dioceses the monks possessed certain appropriate churches, while certain claims of the bishops were resisted, it was admitted that the bishops might seek a *subsidium caritativum* from their parish churches.[1]

4. *Division of Parochial Revenues between Rector and Vicar.*

The arrangements between rectors and vicars varied much as to the manner in which the vicar's portion was to be paid. The simplest method, though not historically the earliest, was for the rector or corporation to receive the whole revenue of the parish and pay to the vicar a

[1] *Chartulary of Lindores.* In the fifteenth century a 'subsidy' was claimed, apparently by Bishop George Browne, on his promotion to Dunkeld in 1484, from the *lands* (as distinguished from the churches) held in his diocese by the monastery of Cupar. In their difficulty the monks of Cupar consulted their brethren of the monastery of Arbroath, and the reply of the latter is preserved. The rapacity of the bishop is indignantly censured in language discreetly expressed in general terms, and the monks of Arbroath declare that such an impost was unknown to them. *Reg. Nigrum de Aberbroth.* 242.

fixed sum of money, commonly called a pension. We find several examples of this mode of arrangement in the fourteenth century. Thus, in 1314, the Bishop of Aberdeen, with the consent of his chapter, made over his church of Alveth to the Cistercian monastery of Cupar Angus *in proprios usus*.[1] And it was stipulated that the church of Alveth should be served by a perpetual vicar, who, on the presentation of the abbat and convent, should receive the cure of souls from the Bishop of Aberdeen, and from the abbat and convent ten pounds sterling *per annum*, with his toft, croft, and manse. But the vicar was to be responsible for the 'ordinary burdens' to the bishop and archdeacon. This would leave the vicar a little over the ten marks, which the Scottish statute of the preceding century had enjoined as the *minimum* payment to a vicar.[2]

During the episcopate of the able and vigorous John Cameron, Bishop of Glasgow (1426-1446), six parish churches were granted by their respective patrons to the bishop to be erected into prebends for canonries in his cathedral. In all these cases the patrons reserved to themselves and their successors the right of presenting to the prebends, while the bishop was to have the right of appointing the perpetual vicars. He fixed their stipends in five cases at 20 marks (£13 6s. 8d.), and in one case at 15 marks (£10). These fixed sums are spoken of as 'pensions' and the term 'vicar pensionary' is not infrequent at this date.[3]

In earlier days, and the usage continued in many instances to the end, the tithes were divided in different proportions between the rector and the vicar, the great tithes going to the rector and the lesser tithes to the vicar. This will be dealt with more fully when we come to consider the subject of tithes. We have only to add here that the arrangement as to the allowance of the vicar, when once

[1] The deed of gift sets forth that the resources of the monastery were exceedingly exhausted through the disasters of war. The monastery had already enjoyed the *patronage* of Alveth. *Rental-Book of Cupar Abbey*, i. p. xvii.

[2] *Reg. Aberd.* i. 41-43.

[3] *R.G.* ii. 340.

made with the approval of the bishop, could not lawfully be set aside without his concurrence.

In some cases the vicar collected and received the tithes and other revenues of the parish, and the rector, or corporation in the case of appropriate churches, received from the vicar a fixed sum or 'pension.'[1]

The one feature common to all arrangements was that the non-resident rector or corporation received the main bulk of the revenue, and the working parish priest the smaller part. A few concrete examples may be given. The proportion assigned respectively to the vicars and the Abbey of Lindores (having rectorial rights) out of the revenues of churches in Aberdeenshire has been exhibited by the writer in detail elsewhere.[2] It will suffice to take three examples. From Premnay the vicar had 2 lib. 13s. 4d. and the abbey 10 lib. 13s. 8d.; from Insch the vicar had 4 lib. and the abbey 14 lib. 13s. 4d.; from Culsalmond the vicar had 4 lib. and the abbey 17 lib. 13s. 4d.

The same truth comes out from the 'Taxaciones' of the diocese of Moray. I select in this case the first two of the prebendal churches,—Prebend of Petyne, 38 marks; vicar, 4 marks: Abyrlour, 30 marks; vicar, 3 marks. A few churches appropriated to monasteries may be added. Inverness (belonging to the abbey of Arbroath) 40 marks; vicar, 20 marks: Coneway (belonging to the priory of Beaulieu), 24 marks; vicar, 4 marks.

Occasionally we find a bishop consenting to the appointment of a monk to the vicarage of an appropriate church, so that the revenues both of the rector and vicar might go to the monastery. Thus, in 1242, David de Bernham, Bishop of St. Andrews, on acccount of the heavy weight of debt incurred by building operations at Dryburgh, allowed the monastery to present their own monks to the vicarages of their appropriate churches situated in his diocese,

[1] This was obviously a convenient arrangement when the body holding rectorial rights was at a distance from the parish. A good example is found in the case of Lindores Abbey possessing the parish church of Whissendene in the diocese of Lincoln, a grant made by the founder, David, Earl of Huntingdon. See *Chartulary of Lindores Abbey*, pp. 120-121.

[2] *Chartulary of the Abbey of Lindores*, pp. xlvii-xlix.

on condition that a secular priest should reside with the monk who held the vicarage to assist him in the duties which he (as possibly not in priest's orders) could not perform. As Bernham's object was to save expense to the monastery it is obvious that the secular priest's stipend would be smaller, probably much smaller, than what he would have received if he had been vicar.[1] The monks of Kelso were similarly treated by Bishop David in 1251, and so far that the bishop did not require them to present a vicar, but only a 'decent chaplain' to their church of Symprine.[2]

An illustration may now be taken from the period on the verge of the Reformation. The church of Alveth in the diocese of Aberdeen and shire of Banff, which, as we have seen, was granted to the abbey of Cupar in the time of Robert I., was in the year 1542 let[3] by the abbat and convent for the space of nineteen years to Sir Walter Ogilvy and Dame Alison Hume, his spouse, their heirs or assignees; with the whole of the teinds, fruits, rents, offerings and emoluments of the parish church, 'baith personage and vicarage' (*i.e.* all the profits of both rector and vicar) for the annual payment to the abbey of seventy-four pounds 'usual money,' burdened with the stipend of ten pounds a year (with his manse and glebe) to the vicar pensioner, ten marks to the cathedral of Aberdeen and the bishop's dues.[4]

5. *The Farming of Churches.*

The fact stated above is mentioned here as illustrating the disproportion between the parochial revenues and the sum received by the working clergyman. But, having been mentioned, it suggests that this is not an inappropriate place to say something of the leasing of parish churches. To go with anything like thoroughness into the complicated history of the laws which from time to time regulated the farming (*donatio ad firmam*) of ecclesiastical benefices would require more space than can be here

[1] *Reg. de Dryburgh*, 27, 28. [2] *Lib. de Calchou*, i. 228.

[3] This was the renewal of a previous lease to the same parties.

[4] *Rental-Book of Cupar Angus*, ii. 26-27.

PIETA IN STONE

Found in the Churchyard of Banff.

STONE FIGURE OF BISHOP

Found in foundation of Rutherglen Church. The ancient church of Rutherglen dated from the twelfth century.

BRONZE FIGURE OF CHRIST

Being part of a Crucifix found when the foundations were being dug for the present Greyfriars Church, Dumfries.

afforded to the subject. It must suffice to say briefly that, while the alienation of ecclesiastical property was rigidly forbidden by the Canon Law, it was lawful under certain circumstances, and subject to certain conditions, for the holder of a benefice, in consideration of an advance of money, to give as security a claim on the fruits of the benefice for a limited number of years. Such transactions were looked on with disfavour, and could be legally effected only with the knowledge and consent of the bishop of the diocese or his archdeacon. In the thirteenth and fourteenth centuries to farm a benefice to a layman was forbidden,[1] and any arrangement of that kind was to be held as null. There are indications from English sources that it was attempted to evade this enactment (which had effect also in England) by inserting in the contract the name of an ecclesiastic, and sometimes of a non-existent ecclesiastic, while in reality the *firmarius* was a layman. In the constitutions (A.D. 1342) of John Stratford, Archbishop of Canterbury, a dark picture is presented of the evils that sometimes followed. Cases were known of the lay farmer of the church setting himself down with his wife and children in the parsonage; and even the greater scandal of the parsonage being turned into a public tavern was not unknown.[2]

In Scotland, in the thirteenth century, with a view to prevent anything like alienation, it was enacted that five years should be the limit for which a church could be assigned *ad firmam*, and at the end of that term a new lease should not be to the same person, though after the intervention of another lease, the first lessee might again be admitted.[3]

In spite of ecclesiastical enactments the evil seems to have increased. In the belated Provincial Synods of 1549 and 1552 efforts were made to remedy the unhappy state of things, which is described in language singularly frank and outspoken.[4] But it was now too late.

[1] *S.E.S.* ii. 14, 41, 61, 67.

[2] Wilkins' *Concilia*, ii. 704. See also for other English enactments dealing with this matter the same work, i. 580, 588, 651, 672 : ii. 10, 502, 580, 588, 651, 672.

[3] *S.E.S.* ii. 14.

[4] *S.E.S.* ii. 94, 134, 168.

It must, however, be admitted that the letting of rectorial tithes by monasteries, in the case of appropriate churches situated in places remote from the monasteries possessing them, might be of real utility to the monasteries and of no disadvantage to the parish, if the transaction were conducted in a fair spirit. The real evil lay in the original appropriation of parish churches, and the diverting of revenues bestowed for one purpose to another and totally different purpose. What is chiefly condemned by the late and reforming Councils of the sixteenth century is the leasing for long periods of church lands and teinds on very favourable terms to the relations or friends of ecclesiastics in power to the detriment of the Church. In the fifteenth and sixteenth centuries the leasing of their parish churches to laymen was the all but universal practice of the monasteries, as is shown abundantly by the monastic chartularies. Occasionally (as we have seen) the vicarage as well as the rectory was let to lay persons with only the provision that a small *pensio* should be paid to a priest for the maintenance of the services and the care of the parish.

6. *Annexations of Benefices to Bishoprics, Abbeys, and Priories, forbidden by Parliament.*

In 1471 the Parliament of Scotland passed a very important Act affecting the Church in several ways. The preamble declares that 'gret dampnage and skaith was dayli donne to al the Realme be clerkis, religious and secularis quhilkis purches abbasyis and uther benefice at the court of Rome, quhilkis was never tharat of befor.' It is further complained that new taxes were imposed upon benefices by Rome, and that these, with annexations of benefices, were doing skaith to the common good of the Realm, 'considering the innumerable riches that is had out of the Realm therethrough.' As a remedy of these evils Parliament enacted that abbeys and elective benefices should enjoy freedom of election; that none of the lieges, spiritual or temporal, be collectors to the See of Rome of any taxes higher than those of Bagimont; and, lastly, that there should be no annexations of any benefice to bishoprics, abbeys, or priories, and that all annexations

made since the king (James III.) came to the throne (1460) should be null and the benefices restored to their first foundation. The penalty of violating the act was severe: transgressors were to be held as traitors to our sovereign lord and his successors, and should 'never bruke benefice nor use worship within the Realm.' But an exception is made for any lords or barons effecting annexations of benefices, of their own patronage or of others, to 'secular colleges founded or to be founded.' This was a blow to the increasing wealth of the bishoprics and monastic houses. The 'secular colleges' referred to were, as I take it, the collegiate churches, the corporations of which consisted of secular clergy, and the patronage of which, as a rule, remained in the hands of the lay founders.

The occasion for this vigorous action is not very apparent. Doubtless the poverty of the kingdom stirred men to resist the transfer of large sums to Rome. But, at least on the king's part, one may question any genuine desire for freedom of election, as, only two years later than the Act of Parliament, he set aside the abbat elected by the monastery of Dunfermline, and by the aid of the Pope substituted a nominee of his own.[1]

The Act of 1471 does not seem to have been completely effective; for as early as 1488 it was re-enacted with additions, annulling annexations and unions of benefices made in the interval by Archbishop Graham.[2]

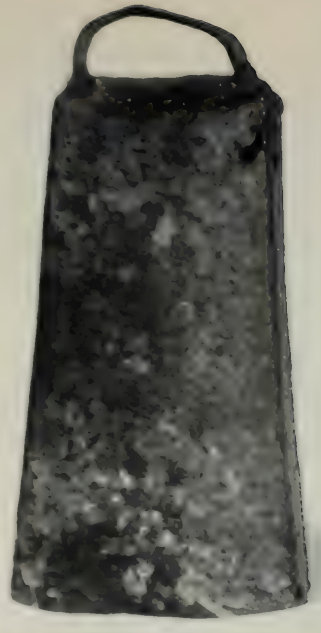
7. *Rectors of Churches not necessarily in Holy Orders.*

The statutes of Scottish Councils in the thirteenth century contain ample evidence that the practice of laymen, or persons in only minor orders, holding the rectorial rights of parish churches, was sufficiently common to demand legislation. We find a statute entitled 'That rectors be ordained and serve their churches.' In this ordinance it is enjoined 'that rectors of churches come to be ordained to first orders so that they may as soon as it is possible be duly ordained.' But it is immediately added that they may serve their churches by vicars if they do not

[1] See Lesley, *De reb. gest.* 305. [2] *A. P.* ii. 209.

serve them in person.[1] It is plain that in Scotland, as in England, the founders and patrons of churches and their successors regarded the churches as property which they could bestow at will on some member of the family, though he were neither qualified nor desirous to take Holy Orders. Other statutes are to the same effect as that cited above.[2] Thus children who had received the first tonsure, admitting to minor orders, could hold a valuable benefice as rector on the condition that a vicar was appointed. Early in the fourteenth century Patrick, Earl of March, the patron, presented Fergus of Crawford, a boy of thirteen, to the church of Dalry, in the diocese of Galloway, and by him it was held for fifteen years, at the end of which he was not yet ordained.[3] So far was the priesthood from being an object of desire that we have instances of men of family, and ecclesiastics engaged about the court, who were advanced to some bishopric, having to be ordained priest immediately before their consecration as bishop. Thus, towards the close of the twelfth century, Roger de Beaumont, cousin of the king, was elected to the bishopric of St. Andrews in 1189, but it was not till after nearly ten years that he was made a priest prior to receiving consecration.[4] A little later Adam of Crail, 'clericus regis,' seems to have been only a subdeacon when elected to the see of Aberdeen (1207).[5] In dealing with some of the persons who appear in the charters of religious houses, or cathedrals, as 'rectors' or 'parsons,' it would be very hazardous to conclude that they were ecclesiastics in more than name. Thus it would be rash to picture to ourselves Malise, brother of Robert, fourth Earl of Strathern, who appears as 'parson of Gask,' in the light of a man of noble family engaged in the holy labours of the parish priest of a country church in Perthshire.[6] The same may be said of certain members of the family of Hay of Errol, who were 'rectors' of the church of Errol.[7]

[1] *Stat. Eccl. Scot.* ii. 41.
[2] *Ibid.* pp. 62-63.
[3] *Cal. Pap. Reg.* ii. 361.
[4] Hoveden, iv. 31.
[5] *Cal. Pap. Reg.* i. 30.
[6] *Chartulary of Lindores*, pp. 30, 58.
[7] *Ibid.* p. 84.

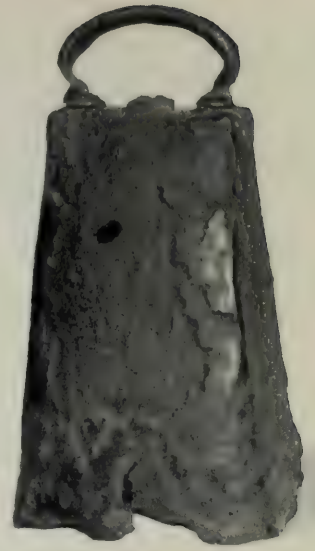


THE RONNELL BELL OF BIRNIE

From the Church of Rosail, the first seat of the Bishopric of Caithness.

ANCIENT BELL

of hammered iron, clasped with nails, a relic of the old chapel attached to the Castle of the Thanes of Old Cawdor.



THE BREIDBEAN
OR BELL OF ST. FILLAN

From the old Parish Church of Strowan.

An acquaintance with a practice only too common will render intelligible the Scottish statute already cited, and another which enjoins on every rector to have in his church a fit, competent, and well-instructed (*literatum*) priest, or else be himself ordained priest to minister in his own church.[1]

Many examples of rectories being held by persons not in Holy Orders during the medieval period in England could be cited, showing that the Scottish Church did not differ in this respect from the Church south of the Tweed.[2]

The last Council of the Scottish clergy of the old *régime* passed a strict canon attempting to put an end to this abuse. All persons holding benefices in Scotland were to be compelled by their Ordinaries to receive Holy Orders between 10th April and 1st August, in the year 1550. Like all the other enactments of that belated council, this ordinance was futile.[3]

In earlier times, papal dispensations to delay taking the priesthood are not uncommon. In 1254, Nicholas, Dean of Moray, received a dispensation to defer his ordination to the priesthood for five years, during which time he was to occupy himself with the study of theology. Three days subsequent to the date of this dispensation he received another dispensation to hold the perpetual vicarage of Tharvays (Tarvas) in the diocese of Aberdeen, together with his deanery.[4] In 1346, the rector of Hawick (who was also at the time a canon of Amiens) obtained from the Pope a license not to be ordained priest for seven years, yet in the meantime to enjoy the fruits of his benefices.[5] A little later the parish church of Kineff was declared vacant, after being held 'for many years' by one Robert Moyne, not in Holy Orders.[6] The parish of Penningham, in Wigtonshire, had been held about the

[1] *Stat. Eccl. Scot.* ii. 63.

[2] The reader will find a popular, yet scholarly account of what is here noticed in Dr. E. L. Cutts' *Parish Priests and their People in the Middle Ages in England*, pp. 324-329. A striking illustration may be added. In 1205, the Bishop of Winchester receives an order from Innocent III. to compel archdeacons, deans and others to take orders. *Cal. Pap. Reg.* i. 23.

[3] *Stat. Eccl. Scot.* ii. 159.

[4] *Cal. Pap. Reg.* i. 295.

[5] *Cal. Pap. Reg.* (Petitions), i. 123.

[6] *Ibid.* 304.

middle of the fourteenth century 'for many years' by two persons in succession, neither of whom was in Holy Orders.[1]

Henry de Lichton (afterwards successively Bishop of Moray and of Aberdeen) was rector of the valuable benefice of Kinkel in Aberdeen, in 1409, and was dispensed from being ordained for five years, while studying at an university.[2] Many other examples might be cited.

8. *Manses.*

The ecclesiastical statutes of the thirteenth century, make it plain that at the time of their promulgation residences had not yet been provided for all the parochial clergy. The injunction is explicit, that within one year there should be provided near every parish church, a manse.[3] The cost of its erection was to be borne by the rector and the vicar, the share to be paid by each being in proportion to the income derived by each from the parish. The main bulk of the initial cost would accordingly fall upon the rector. But the subsequent upkeep of the building was to be met by the vicar only, because, as is expressly stated, it was he who enjoyed 'the use and convenience of the building.' The vicar was to be compelled to keep the manse in repair under the penalty of the sequestration of the fruits of the benefice. It would evidently be a temptation to the rector to aim at providing as cheap a building as possible; but the intention of the statute was that the vicar's house should be a good and substantial edifice, for it was to be a house 'in which the Bishop or Archdeacon could be honourably received,' when they made their visitation tours.[4]

While there was no manse it was practically impossible to enforce residence. But even after the manse had been supplied, there was, it is evident, some difficulty in always securing that the responsible clergyman should reside.

[1] *Cal. Pap. Reg.* (Petitions), i. 347. [2] *Ibid.* 639.

[3] *Mansum* is the form of the word more commonly used, but *mansio* is also found.

[4] *S.E.S.* ii. 13.

A statute of later date, apparently, than that just recited, refers to country clergy making their residence in towns. This is forbidden except by special dispensation, or, in cases of urgent necessity, under the heavy penalty of being deprived of the fruits of the benefice for the space of four years.[1]

In the fourteenth century the bishops had still to complain of the manses being poor and paltry buildings. The Bishop of St. Andrews declares that he is unable to make his visitations in person, as he cannot be received *propter simplicitatem edificiorum in beneficiis nostre diocesis*. He enjoins that this state of things should be altered before the next visitation, under a penalty of one hundred shillings.[2]

It may seem, and doubtless was, rather unreasonable to measure the suitability of a country clergyman's house by its fitness for the entertainment of the bishop, travelling with his retinue. But the effect must have been to make the manses a superior kind of building, and as the expense of all building had to be chiefly borne by the non-resident rector, who drew the main revenues of the parish in which, perhaps, he had never set his foot, in many cases it is probable that the working parish clergyman would have hailed the injunction with pleasure.

Another statute (thirteenth century)[3] provides for the case of a rector leaving the manse in a ruinous condition at his decease. Whatever was required for putting the house in repair was to be deducted from the ecclesiastical revenues due to the deceased. In this connexion it may be repeated that, if not universally throughout Scotland, certainly in some dioceses, the representatives of beneficed clergymen were allowed the revenues of their benefice for one year from the date of their death. This in Scotland was styled the *annuale*. This privilege will be considered more fully hereafter. The statute referred to above, enjoins that the utensils (*utensilia domus*) should be left in the manse for the successor in office. The expression used in the statute is somewhat indefinite; but here we find in illustration the 'utensils' which the beneficed clergy of cathedrals were required to leave for the use of their successors.

[1] *Ibid.* 59. [2] *Ibid.* 64. [3] *Ibid.* 36.

9. *Clergy engaged for a Salary but without Fixity of Tenure.*

Beside rectors and vicars we find notices of priests corresponding tolerably closely to those who are now known as assistant-curates. In the thirteenth century these priests are known as hired chaplains (*capellani conducticii*). And it was thought necessary to promulgate a synodical ordinance that none such should demand or receive a salary of more than one hundred shillings for the year, although in times past, on account of extreme scarcity (*propter intollerabilem caristiam*), larger sums had been given. It was permitted, however, that a rector or vicar, if so disposed, might, not as of right, but of courtesy, bestow on his assistant some old clothes (*de vestibus antiquis*) or some other gift. None of these chaplains should be engaged for less than twelve months, nor should he leave his charge without satisfying the archdeacon that he had reasonable cause, and no rector or vicar should engage him after he had left, unless he exhibited the archdeacon's letters of permission.[1] These notices fall in with what we gather elsewhere as to a disposition shown sometimes by vicars as well as rectors to reside elsewhere than in their parishes. But of course there would often be instances where a resident rector or vicar might need assistance in the performance of his duty.

10. *The Parish Clerk.*

In the fifteenth and sixteenth centuries the parish clerk (*clericus parochialis*) appears not infrequently in Scottish records. Though the *name*, 'parish clerk,' does not, I think, appear at an early date, the office of parish clerk seems to be ecclesiastically identical with that of the Aquaebajulus, as we may infer from the ceremonial of investiture of the parish clerk, which was the delivery of the water-stock (a bucket carried by a handle) and sprinkler (*per traditionem amphore benedicte aque et aspersorii*). The Aquaebajulus used to go on Sundays and great festivals to the houses of the parishioners with

[1] *S.E.S.* ii. 42, 51. Compare also *De mutatione sacerdotum*, p. 61.

BRONZE BELL

From Little Dunkeld, Perthshire.

QUADRANGULAR IRON BELL

Found in Knowe of Saverough, Birsay, Orkney.

the blessed water, and having sprinkled the people in the house, received what was called 'alms,' which 'alms' appear to have come in later times to be regarded as 'dues.'[1] He also assisted at mass; and, more particularly, if we may transfer to Scotland what we know was the English practice, he was authorised to read the liturgical epistle. It was, perhaps, these duties that are referred to in a complaint made by the curate of Insch (1536) about the misbehaviour of the parish clerk depute, accompanied by the request that he should not be allowed to minister 'at the altar or to the parishioners' till an enquiry was made into his conduct.[2]

It is particularly interesting to observe that in many cases the appointment of the parish clerk was made by the popular suffrage of the parishioners, and that the votes of women as well as of men were allowed. We possess detailed examples of such popular elections. The people convened in the parish church; and sometimes in the instrument drawn up to be sent to the bishop (with whom it lay to admit the presentee, and order his induction) the names of those present (in the case of Morthlach about 150 in number, including the Earl of Atholl) are recorded, and of these there is occasionally a considerable proportion of women's names.[3] The interest taken in the election is shown by the presence of the rich and noble as well as the humbler parishioners,—*generosi* as well as *husbandi et tenentes*. The eminent legal antiquary, John Riddell, writing in 1842, observes the singularity of women 'having then no voice in law,' taking a part in the election; and he adds, on this patronage possessed by the parishioners: 'The above was the only spiritual patronage parishioners possessed with us in papal times, although much the same right and procedure the present Presbyterian Scottish Church would now for the first time extend to them

[1] See the illustration of a lord and a lady being sprinkled as they sit at table, from a fourteenth century MS. in Dr. Cutts' *Parish Priests and their People in the Middle Ages in England*, p. 300.

[2] *Antiquities of Aberdeen and Banff*, iii. 401-402.

[3] See *Antiquities of Aberdeen and Banff*, iii. 454-457.

in respect to church preferment and advowsons at large.'[1]

It may be that the ecclesiastical rule that the election should be made by 'the larger or sounder' part of the parishioners gave occasion to the not infrequent disputed elections which had to be tried and settled before the Consistory Courts. There is an example of a disputed election, the decision with regard to which must be placed between the death of Archbishop Alexander Stewart (9th Sept. 1513) and the promulgating of the bulls for Forman's appointment (15th Jan. 1515).[2] The parishioners of Lessuaid (Lasswade) seem to have not been unanimous in their choice of a parish clerk. Some votes were given to 'the honourable man George Preston, son and apparent heir of the noble man Simon Preston of Preston, knight,' and some to James Sinclair. The case went to the Consistory, and the judge, the official and commissary of the archdeaconry of Lothian, pronounced in favour of Sinclair, condemning Preston to pay the costs. In another disputed election, by the parishioners of Edrom, between Master James Schoriswod and Alexander Hume, the election of the latter, which had actually been confirmed by the ordinary, was set aside, and both the election and confirmation declared null, as having been obtained by deceit (*surreptione obtenta*).[3]

It is also of interest to observe that even in cases where the patronage of a parish clerkship was claimed and admitted to be in the hands of another, the parishioners were still called upon to ratify and assent to the appointment. In 1486, we find the abbat of Holyrood appointing to the parish clerkship of Canongate and North Leith : yet on Sunday (2nd April) before the parish altar of the abbey, the parishioners [of the Canongate] being congregated in large numbers (*in magna copia*) at high mass, the sacristan, prior, and

[1] *Inquiry into the Law and Practice in Scottish Peerages*, ii. 683. Mr. Riddell's statement in the latter part of the words cited is not correct. See the section 'The manner of electing the Pastors or Ministers in the First Book of Discipline.'

[2] *Liber Officialis S. Andree*, 117-118. [3] *Ibid.* 131-132.

sub-prior, in the name of the abbat, publicly asked the parishioners whether they were willing to approve and ratify the abbat's appointment. Whereupon, at the command of the parishioners, the clerk who had resigned came forward and acknowledged that he had irrevocably resigned his office (on account of age and infirmity), and earnestly begged the parishioners to receive the abbat's nominee; and immediately the parishioners with one consent approved and ratified in all points the grant made by the abbat. The old clerk thereupon delivered with his own hands the water-stock and sprinkler into the hands of his successor, who then passed through the church after the parish priest as the manner is in ministering the said office.[1] So far the transaction was complete as regards the parishioners of Canongate. But the parishioners of North Leith had also to be consulted; and by a piece of singular good fortune the instrument testifying to their approval survives to supplement the information given above. Four days later than the transaction in the abbey church, a similar request was made in the name of the abbat at the head-court of his regality and barony of Broughton, where the parishioners of Leith were congregated, it is said, in great numbers. Here again the consent and assent of the parishioners was fully given, *nullo contradicente*.[2]

The transaction recorded above shows that it would be hazardous to infer that, where parish clerkships are said to be 'in the gift of the bishop'—as in the case of certain parishes of the diocese of Aberdeen—the parishioners did not possess the right to approve or disapprove of the appointment.[3]

In England, even subsequent to the Reformation, and notwithstanding a canon to the contrary, the courts have in several cases decided that prescription, as proved

[1] *Laing Charters*, No. 196.

[2] The instrument, from the charters of the Duke of Roxburgh, is printed by Cosmo Innes in the appendix to *Lib. Offic. S. Andr.* pp. xlvi, xlvii.

[3] See *Reg. Ep. Aberd.* i. 381.

by ancient usage, gave in certain parishes the right of electing the parish clerk to the parishioners.[1]

The indications we have in record of 'parish clerks depute' is of a piece with the inveterate habit of medieval ecclesiastics, of all grades, getting other persons to do their work, while they themselves pocketed the main part of the profits.[2] It may help, too, to make more intelligible the desire sometimes exhibited by persons of high social position to secure an office that is associated in our minds with notions of inferiority and subjection. But, however this may be, it is a matter of fact that the office of parish clerk was sometimes filled by men of family. As noticed above (p. 134) we find the son and heir of Sir Simon Preston, knight, competing for the parish clerkship of Lasswade. The parish clerk of Tullynessle, in 1556, was William Gordon, described as *filius nobilis viri* Alexander Gordon of Strathoine, and his successor, elected by the parishioners, is Patrick Leyth *filius honorabilis viri*, Patrick Leyth de Crannoth.[3] And, doubtless, those who are versed in Scottish family histories could name others of good social position who can be identified with persons named as parish clerks.[4] But the subject needs further elucidation.

[1] See Burn's *Ecclesiastical Law*, *s.v. Parish Clerk*, where much that is interesting on the accustomed alms given to the clerk will be found.

[2] See *Antiquities of Aberdeen and Banff*, iii. 454-457. This case (1550) looks as if the clerkship was to serve as a kind of bursary to a student at Aberdeen, a deputy doing the work, and there are other indications elsewhere that point to similar uses of the income. Certainly in medieval England we find episcopal constitutions prescribing that the holy water should be conferred upon poor scholars, as, for instance, the constitutions of William de Bleys (A.D. 1229). See Wilkins' *Concilia*, i. 633.

[3] *Collections*, *Aberdeen and Banff*, 628.

[4] Dr. J. Wickham Legg, in his valuable Introduction to *The Clerk's Book of 1549* (Henry Bradshaw Society), p. xxxvii, cites Dr. Raine for the fact that in Northumberland shortly after the Reformation 'in many parishes or chapelries, in which was settled a house of old descent and note and coat armour, we have one of the same family name acting as parish clerk.' For the subject of the parish clerk in England Dr. Legg's Introduction is full of information.

11. *The word* 'Plebania.'

Before closing this account of the parochial system in medieval times it is right to say something of the word *plebania* as applied to a large parochial district with subordinate chapels. The prebend of Kinkell was styled a *plebania*.[1] It had chapels within the parish, which was of wide extent. The name occurs, as applied to Kinkell, in a sixteenth century notice of the prebends of Aberdeen.[2] I imagine that the word was simply borrowed from the use of the word as in the Sext of the Decretals[3] as applied to certain parish churches 'sub se capellas habentes.' I take it that the word was an affectation of the writer, and in Scotland used, when used at all, as it were in inverted commas. The rectory of Kinkell was so rich and extensive, and dignified by the possession of chapels of ease, that it was, as I fancy, a little joke in the chapter-house to style it the *plebania*. It does not occur, I think, in any charter or legal document relating to the parish. I hold it to be merely an affected employment of a term used but infrequently out of Italy.[4]

12. *The meaning of the term* 'Altarage.'

In arrangements with regard to the apportionment of the revenues of a parish, as they are stated in the deeds recorded in the ecclesiastical registers, the word 'altarage' (*altaragium*) occurs from time to time. By some writers who have not been well versed in the study of medieval antiquities, the word has been, perhaps not unnaturally, understood to signify only the oblations or offerings (some of which had come to be regarded as 'dues') customarily paid to the priest officiating at the

[1] Bishop Henry de Lychton is said to have added to his chapter 'prebendam de Kinkel, alias dictam *plebaniam*, seu militum Hierosolimitanorum cum capellis ejusdem.' *Reg. Aberd.* ii. 253. There were six chapels beside the mother-church.

[2] *Reg. Aberd.* ii. 253.

[3] III. tit. xxiv. cap. 1.

[4] Mr. Cosmo Innes refers to the great parish of Stobo with its chaplainries as being another *plebania*, but the word, it is admitted, is not found in record as applied to Stobo. *Orig. Paroch.* i. 197.

altar. But a more careful study makes it plain that by this term there was also sometimes included the customary allowance of the small tithes (as distinguished from the greater or garbal tithes) made to the vicar.[1]

Thus, to take a few examples, in the bulls fixing the allowances to be granted to the perpetual vicars of those churches in the diocese of Aberdeen which pertained respectively to the monasteries of Arbroath and Lindores in the year 1257, we find no express mention of the small tithes, while the word 'altaragium' seems plainly used in opposition to the garbal tithes. In the case of Fywin (Fyvie) this is brought out clearly. The altarage is assigned to the vicar, *except* lambs or marketable wool (*lana pacabilis*) to the value of five marks, which, with the whole of the garbal tithes, should go to Arbroath.[2] The sense now given to the term 'altarage' will explain the language of an arrangement entered into in 1227 with respect to the allowances to the vicars of the appropriate churches of the monastery of Paisley. Thus the vicar of Turneberie was to have 100 shillings from the altarage, or, if the altarage did not suffice, out of the tithe of corn. And the vicar of Rutherglen was to have the altarage *except* the tithe of fish, on paying two marks to the monks.[3]

But though the word 'altarage' was not ordinarily used exclusively of the offerings made by the people, the offerings were certainly included under that term, and these offerings sometimes made an appreciable addition to the priest's income.

[1] See the additions to Ducange by the Benedictines, *s.v. altaragium.*

[2] See *R. A.* i. pp. 18-26. This sense of the word 'altarage' is to be the more carefully noted because the word was sometimes used for the voluntary offerings made to the priest ministering at the altar. See the *Commentaria* of Johannes de Athona on the *Constitutiones D. Othonis et D. Othoboni*, appended to Lyndwood's *Provinciale* (Oxon. 1679).

[3] *Regist. de Passelet*, 321.

CHAPTER VIII

THE PARISH CHURCH AND ITS PRIVILEGES
CHURCHES SPECIALLY PRIVILEGED AS SANCTUARIES

The Scottish thirteenth century statutes prescribe that the parish church should be built of stone.[1] Possibly there were still surviving some of the wooden structures which formed the churches of the early Celtic Christianity of the country.[2] The cost of the building was to be defrayed by the parishioners, with the exception of the chancel, which was to be built at the cost of the rector.[3]

The churches were to be supplied with the proper furniture (*ornamenta*), books, and vessels.[4]

After their construction the churches were to be duly consecrated.[5] This obligation was often neglected. The zeal of David de Bernham, bishop of St. Andrews, exhibited itself in the consecration of a great number of churches (140 in all) between 1240 and 1249; but it would be a mistake, into which some have fallen, to suppose that these various churches were only recently erected.[6]

[1] *Statuta Ecclesiae Scoticanae*, ii. 11.

[2] The Saxon church, rudely constructed of split oak, at Greenstead in Essex, survives to this day.

[3] The upkeep, in whole or part, of the fabric of the chancel was by arrangement often imposed upon the vicars. Examples will be found in *Reg. Aberdon.* i. 23; *Chartulary of Lindores*, p. 100.

[4] The text reads *vasis*; but I suspect that this is an error for *vestimentis*. The *vasa* are included in the *ornamenta*.

[5] *Stat. Eccl. Scot.* ii. 11.

[6] In 1240 Bishop Bernham dedicated the churches of Lasswade, the Preaching Friars at Perth, and St. Nicholas, Berwick. In 1241 he dedi-

From another set of statutes (also of the thirteenth century) we learn that the windows were to be glazed, —those in the chancel at the cost of the rector, and those in the body of the church at the cost of the parishioners.[1]

Each church should have a silver chalice which, together with the books and whatever was necessary for the covering of the altar and for its lights, should be provided by the rector under penalty of suspension from his benefice.[2]

The books and sacerdotal vestments in good condition were to be left to his successor by the rector, otherwise the portion of his income due should be mulcted to the extent of what was necessary to supply the want.[3]

There should be a font (*baptisterium*) of stone or wood, and, when not in use, it should be kept locked.[4] Fonts with a lid or cover, with lock attached, were common in English churches, and several specimens of medieval fonts with such covers still exist. The font was to be of sufficient size (*competens*); this presumably refers to the fact that in all ordinary cases baptism was administered to infants by immersion. And it is thus the word *competens* is glossed by Lyndwood[5] when commenting on the corresponding English statute: 'The font is to be of

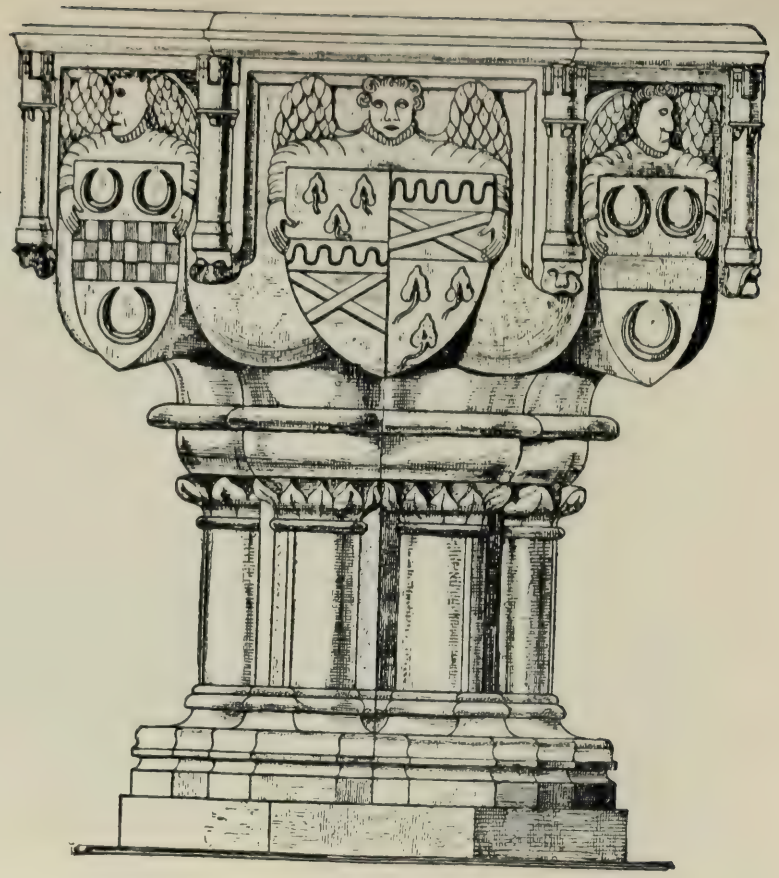
cated the churches of Kirkton (? St. Ninian's, Stirlingshire), Merton near Dryburgh, Yester, Linton (in Haddingtonshire), Forteviot, Kinnettles, Mid-Calder, St. Cuthbert's, Edinburgh (*sub castro*), and Channelkirk in Berwickshire. In 1242 he dedicated the churches of Gordon in Berwickshire, Stitchel in Roxburghshire, Fogo, Greenlaw, Langton, Polwarth, and Chirnside, all in Berwickshire, Holy Trinity, Berwick, Baro (Haddingtonshire), Pencaitland, Cockpen, Linlithgow, Collace in Perthshire, Falkirk (*Varia Capella*), Strachan, Nigg, Arbuthnott, Kinneff, St. Cyrus (Egglesgerch), Aberluthnoth (Marykirk, Kincardine), Tannadyce, Inverkeilor, St. Vigean's, near Arbroath, Aberlemno, Glamis, Airlie, Newtyle, Fugeles (? Fowlis Easter), Perth, Abdie, Flisk, Wymeth (Woolmet, Midlothian), Seaton, Gulane, the Nuns of North Berwick, Innerwick, Oldhamstocks, Legerwood, Wedale, Erseldun (Earlston). These (exhibited as specimens) and the remaining churches dedicated by Bernham will be found recorded in the *Pontifical Offices used by De Bernham*, edited by Canon Christopher Wordsworth, 1885.

[1] *Stat. Eccl. Scot.* ii. 53. [2] *Ibid.* [3] *Ibid.* 35.

[4] *Ibid.* 39. [5] *Provinciale*, lib. iii. tit. 24.

SCULPTURED FONT

Displaying Crucifixion, Virgin and Child, St. Michael and the Dragon, and figure of Bishop, with defaced inscription, from the ancient chapel of St. Malrube, Loch Torridon, Skye.



FONT

Found under the old church tower, Inverkeithing, Fifeshire.

sufficient size to allow of immersion in it.'[1] The permission to use wood in the construction of a font was unusual, but if, as was common, the bowl or basin of the font was lined with lead, it mattered little whether the outer part was of wood or of stone. Though wooden fonts were unusual, we find that some of the medieval statutes of England, when treating of the material of the font, say it is to be 'lapideum vel aliud.'[2]

Notices of covers for the font appear in many church inventories in England in the sixteenth and seventeenth centuries, and some of the bishops enjoined them on the clergy in their Visitation Articles.[3]

The Scottish statute further ordains that when those who were charged with the duty of keeping the font locked were negligent they were to be suspended from office for three months, while if, through their negligence, any profane abuse of the water occurred, the punishment should be increased.[4] The Scottish statutes supply no hint as to what abuse of the water was feared. Here, however, happily some English statutes of the period come in to afford us some light. The Provincial Statutes of St. Edmund of Canterbury (A.D. 1236) direct the fonts to be kept locked *propter sortilegia*,[5] implying that there was danger of the water being employed for some superstitious purpose connected with conjuration or magical arts.[6]

The importance of the custody and control of the font being in the power of the priest is indicated in the ceremonial sometimes followed in giving possession of a church. Thus in 1527 a priest is put in possession of the church of Kilmarnock by the delivery to him of the

[1] Compare the Constitutions (A.D. 1240) of Walter de Cantilupe, bishop of Worcester, enjoining that there should be a stone font 'decentis amplitudinis et profunditatis.' Wilkins' *Concilia*, i. 666.

[2] It is said that there is an ancient wooden font at Evenechtyd in Denbighshire. F. G. Lee's *Glossary of Liturgical and Ecclesiastical Terms*; *s.v.* 'Font.'

[3] See *Hierurgia Anglicana* (Staley's edit.), i. 3-10.

[4] *Stat. Eccl. Scot.* ii. 30.

[5] Wilkins' *Concilia*, i. 636.

[6] Lyndwood says the fonts were to be kept locked 'ut aqua servetur munda, et ne laicis vel aliis ad aquam ejusdem pateat accessus *ad aliqua nefaria* exercenda.' *Provinciale*, iii. 24.

door-key, chalice, missal, vestments, and of the lock of the font (*seram fontis*).[1]

The chrism and the reserved host were similarly to be kept under lock and key.[2]

The water in the font was to be kept for seven days only after a child had been baptised in it.[3] The Sarum Manual is less precise, but directs that the water should be renewed frequently (*saepe*), lest the water should become foul (*propter aquae corruptionem*).[4] Doubtless the reason why fresh water was not placed in the font whenever there were children to be baptised lay in the fact that it was required that the fresh water should be blessed; and this part of the service, the *Benedictio Fontis*, including a rather long litany and other prayers, with the ceremonial addition of oil and chrism to the water, would occupy much time. The ceremonial of the medieval Church does not come within the scope of the present work. But it is right to say something of the 'chrysoms' or chrism-clothes, for they formed a not unimportant perquisite of the parish church.[5] Immediately after the last of the three immersions of the child the priest made the sign of the cross on the child's head with his thumb, which had been smeared with the chrism, or, as it was called in old English, the 'cream.' After this a white linen cloth was wrapped round the head and body of the child, the notion being that the cloth retained the unction and prevented it being rubbed off. This was the *pannus chrismalis*. The Scottish statutes agree with several English statutes of the thirteenth century in directing that the chrism-clothes after they had served their purpose were to be brought back, and given for the use of the church.[6]

[1] *Regist. de Cambuskyn.* [2] *Stat. Eccl. Scot.* ii. 30. [3] *Ibid.*

[4] The York Manual directs 'Infans in fontem si stercoret ejice lympham. Si tantum mingat non moveatur aqua.'

[5] 'Chrysoms' are entered as forming a part of 'the valew and stynt' of the benefice of St. Magnus, London Bridge, in 1494. Maskell's *Monumenta Ritualia* (2nd edit.), i. 27.

[6] 'Panni Chrismales non nisi in usus ornamentorum ecclesie convertantur.' *S.E.S.* ii. 31. This ordinance agrees with those of the Council of Durham (sometime between 1217 and 1226) and several other English ordinances. See Wilkins' *Concilia*, i. 576, 636, 656, 688, 705, and ii. 132.

The Scottish vernacular name for this cloth was the *cude*[1]; and in Spottiswoode's account of the baptism of James VI. at Stirling we read that Lord Semple carried the *cude*.[2]

The Scottish statute which we are considering, doubtless to secure for the church a continuous succession of chrism-clothes, enjoins that when they had been brought back to the church they should not be given at request or for a consideration (*prece vel precio*) to be used at another baptism.[3]

The possession of a font was a characteristic of a parish church. Private chapels, and, generally, chapels of ease, and (except by special privilege) the churches of the monasteries were forbidden to possess fonts.[4] Hence the term 'baptismal church' is of very frequent occurrence in the sense of a parish church.

Within the church, laymen were forbidden to enter the chancel or to stand or sit among the clergy when the service was being said; but an exception is made for knights, barons, and the founder of the church.[5] In another statute of the same century the exception is limited to the king and the magnates of the kingdom (*majoribus regni*).[6]

The churchyard was to be enclosed and protected from the intrusion of animals. The cost of the enclosure was to be borne by the parishioners, except for the part adjoining the chancel, which was to be paid for by the

[1] See Archbishop Hamilton's *Catechism* (Law's edit.), p. 192.

[2] *History* (edit. 1655), p. 197. One cannot say whether it is merely a misprint or an attempted emendation, on the part of the editor, of a word he did not understand, when we find in Bishop Russell's edit. (1851) the word 'rude' substituted for 'cude.' Vol. ii. p. 42.

[3] There seems to have been no ritual objection to using the cloth again at another baptism. See the Sarum Manual, which expressly permits its use on a second occasion. Maskell's *Mon. Rit.* i. 26.

[4] The prevailing rule as regards private chapels was that they could not be erected without the bishop's license, that the chaplain should take an oath of fealty to the rector or vicar of the parish, and that all the offerings made in the chapel should go to the parish church.

[5] *Stat. Eccl. Scot.* ii. 46. [6] *Ibid.* 42.

rector, though where the custom existed even this part was to be made by the parishioners.[1]

We find legislation aimed at the preservation of the church and churchyard for sacred purposes. The church was doubtless felt to be a convenient place in which to hold the court of barony, when often no other building of considerable size was to be found. Hence it was necessary to forbid the holding of secular courts by laymen in churches or cemeteries.[2] Another ordinance is more specific; secular causes were not to be tried there, especially those which might be followed by a sentence involving the loss of life or limb.[3]

A curious picture of the manners of the day is presented by the thirteenth century statute forbidding under the highest ecclesiastical censures the holding of wrestling matches or sports in churches or cemeteries on festivals.[4] Again, we find another statute prohibiting dances or lascivious games in churches or cemeteries.[5] It is to be remembered that the nave of the church was not filled with seats, as in more recent times, but was commonly an open space where the worshippers stood or knelt; and a very ready floor for a dance would be supplied by the smooth flags with which it was commonly paved.

It is only justice to Scotland to say that the prohibition of dances and wanton sports in cemeteries is borrowed almost word for word from the Constitutions (1223) of Richard Poore, bishop of Salisbury, enacted for his diocese in the extreme south of England.[6] Still, as has been pointed out by Mr. Joseph Robertson, there was need of some restraints in the northern kingdom. There was bull-baiting in the churchyard of Kirkcudbright on St. Cuthbert's day, 1164.[7] And in Easter-week in 1282 the churchyard of Inverkeithing in Fife was a scene of

[1] *Stat. Eccl. Scot.* ii. 53. [2] *Ibid.* 42.

[3] *Ibid.* 38. The latter statute is borrowed from the Sarum Constitutions of 1223. Wilkins' *Concilia*, i. 600.

[4] *Ibid.* 40. [5] *Ibid.* 38.

[6] Wilkins' *Concilia*, i. 600. But it is to be noted that the Scottish statute adds the word 'churches' to 'cemeteries.'

[7] *Reg. Dunelm. de Cuthberti virtut.* cc. lxxxiv, lxxxv.

dancing, preceded and followed by such abominable obscenity on the part of the parish priest that one can only imagine that he was drunk, or not in his senses at the time.[1] As late as 1503 we find Parliament forbidding the holding of markets or fairs within churches and churchyards under pain of escheat of goods.[2] It is a mistake to suppose that the middle ages were characterised by any specially marked veneration for sacred things.

Such were some of the attempts made by ecclesiastical and civil legislation to preserve and foster the sentiment of reverence for the house of God, and to secure its sanctity.

We may now turn to consider one of the most cherished privileges of the parish church, namely, the temporary protection which it was allowed to afford to those who fled to it from the pursuit of persons who were smarting under some real or supposed wrong. They might be criminals or they might be wrongly suspected of crime; but all were alike given a temporary defence against the passion of revenge. Every baptismal church and every church possessing the right of sepulture (this would include most monastic churches) enjoyed this privilege.

Apparently in all cases protection was to be secured to the fugitive until the bishop or his official gave formal sentence that the offence alleged belonged to a class which was exempted from protection. It is thus, as I understand it, that the following statute is to be interpreted: 'Of the immunity of churches: We ordain that those who flee for protection to the church shall be defended by the same unless they be pillagers of fields by night (*nocturni depopulatores agrorum*) or public and notorious highway-robbers (*predones viarum publicarum*) or manifest violators of churches or church-breakers, or those who have been excommunicated *a canone vel ab homine*. In which cases they are still to be defended until the Diocesan or his Official shall have formally (*sententialiter*) pronounced that they should not be defended.'[3]

Mr. Joseph Robertson has called attention to the fact

[1] See *Chronicon de Lanercost*, p. 109.

[2] *Act. Parl.* ii. 245, 252.

[3] *Stat. Eccl. Scot.* ii. 18.

that there exists a secular ordinance of Scottish origin, but of 'unascertained date,' expressed in almost identical language.[1] But he has failed to observe that the language of both the secular and ecclesiastical law is drawn from one of the Decretals of Gregory IX. This Decretal may possibly have claimed special attention in Scotland through the fact that it is the response of the Pope (Innocent III.) to an inquiry of the King of 'Scotland' (*Scotiae*). The rescript is assigned to 'about 1212.' It is not improbable that neither the canonists nor civilians of the day in Scotland were aware that the 'Scotland' meant was Ireland.[2]

The Canon Law extended the privilege of protecting criminals to churches 'in which the divine mysteries are celebrated,' although such churches are not yet consecrated.[3] In Scotland where, as we can infer from the pages of the so-called Pontifical of David de Bernham, so many churches remained long unconsecrated, this privilege was of much practical importance.

I do not recollect having met in our Scottish records any notice of the length of time during which the fugitive in Scotland was entitled to protection from the parish church. In England it was forty days; and before the expiry of the forty days a fugitive guilty of felony might, while under the protection of the church, take an oath 'to abjure the realm,' *i.e.* to quit the country, and not return without the king's license. But, though the length of the period during which protection was afforded in parish churches is not specified, it is plain from certain Scottish statutes that protection was extended for some considerable time, for we find a statute of the diocese of Aberdeen (thirteenth century) forbidding the removal of provisions intended for the sustenance of such fugitives, or the besieging of the fugitives themselves by surrounding the walls.[4]

[1] *Act. Parl.* i. 752.

[2] See the Note in the edition of the *Corpus Juris Canonici* by the brothers Pithaeus (*Parisiis*, 1687), vol. ii. p. 198. The king was the King of Connaught. See *Cal. Pap. Reg.* (Letters), i. 9.

[3] *Decret. Greg. IX.* lib. iii. tit. xlix. 6.

[4] *Stat. Eccl. Scot.* ii. 37. In England it was recognised that fugitives should be permitted without molestation to relieve the wants of nature outside the walls of the church.

In another statute, assigned also with probability to the thirteenth century, we find it ordained that 'in every baptismal church (*i.e.* every parish church), and in every church where there is sepulture, there shall be secure asylum (*refugium*) for everyone to whom it is conceded of right, in the cemetery for thirty paces round.'[1] The Aberdeen statute, referred to above, may be illustrated from certain *Gravamina* set forth by the English bishops about the year 1257, among which we have the complaint that when a fugitive had sought the protection of a church, the burial-ground or the steps of the church were surrounded by persons on guard, so that it was scarcely possible to supply the fugitive with the food necessary to support life.[2]

The difficulties sometimes experienced in giving effective protection to fugitives are well illustrated by a narrative given by Bower in his additions to Fordun.[3] When the castle of Edinburgh was in the hands of the English in the time of Edward III., one of the officers of the English garrison was killed in the city by a Scot named Prendergast. The deed was prompted by a desire for revenge on account of a real or fancied insult. Prendergast succeeded in flying to the Abbey of Holyrood, and claimed asylum by ringing the bell, 'as the custom is.'[4] Failing to get admission into the chancel, which at the time was closed, he entered the chapel of St. Augustine, and was speedily discovered by his English pursuers on his knees before the altar. The English placed a guard upon the chapel to prevent the entrance of food, and, apparently from outside the screen of the chapel, attempted to keep the fugitive from obtaining any sleep by prodding him with spikes fastened to long sticks. How the monks let down food to him from above, and how his escape was eventually effected make an interesting story, for which we must refer the reader to the original, as it is not pertinent to our inquiry.[5]

Passing from the privilege of the baptismal church, and

[1] *Stat. Eccl. Scot.* ii. 46. [2] Wilkins' *Concilia*, i. 727.

[3] *Scotichron.* lib. xiii. cap. 42. [4] Cf. *Leges Marchiarum* in *A.P.S.* i. 416.]

[5] It is questionable whether at this date Holyrood possessed any *special* privilege as sanctuary. [But cf. *Asloan's MS.* p. 44.]

the church possessing the rights of sepulture, something remains to be said of the special privileges of those places possessing what was known as the right of 'sanctuary.' In Scotland, as in England, the privilege of sanctuary seems to have been based in each case on a special grant from the Crown, or at least on the recognition by the Crown of an ancient and well-established custom. The king, to do honour to some favoured church, or to show his devotion to some particular patron saint, would confer the privilege of sanctuary.

Churches specially privileged as Sanctuaries.

Lands around a church enjoying the special privilege of sanctuary, as distinguished from the ordinary privilege of every parish church, were often of very considerable extent. They were known as the 'girth' or 'grith'; and the 'girth' limits were commonly indicated by the erection of stone crosses, or of stones marked with a cross. David I. in 1143 granted to the monks of Kelso the ancient church of Lesmahago in Clydesdale. Lesmahago, which appears to have been an early foundation of Celtic Christianity, had long enjoyed the right of sanctuary, and its girth was marked by four crosses. In his charter to Kelso the King says: 'Whosoever, to escape peril of life or limb, shall flee to the same cell,[1] or within the four crosses which mark the bounds, to them I grant my firm peace, out of the reverence I bear to God and St. Machut.'[2]

At Tain, the venerated shrine of St. Duthac, there was also a girth, marked by four crosses.[3] It is not very long ago since the crosses that marked the girth of Dull, in Atholl, were removed. And one or more of the stones bearing the cross of St. John still remain, it is said, to mark the ancient extent—a mile in every direction—of the girth of the Preceptory of the Knights of St. John of

[1] Lesmahago, then a 'cell,' or dependency of the Abbey of Kelso.

[2] *Liber de Calchou*, p. 9. 'Ecclesia Machuti' is the title by which the place was known, and it seems to have been corrupted into Lesmachute. St. Machutus was supposed to be a companion of St. Brendan on his voyage to the Orcades.

[3] As late as 1681 the bailiary of Tain was 'within the four girth crosses.' *Act. Parl.* viii. 386.

Jerusalem at Torphichen, in Linlithgowshire. Similarly, a mile on all sides was the extent of the girth of the English sanctuaries of Hexham, Beverley, Ripon, and St. Edmundsbury. At Applecross in Ross-shire, like Lesmahago, a sanctuary of the Celtic period, renowned as possessing the remains of St. Maelrubha, a martyr, who suffered at the hands of the Danes, the girth extended to six miles round the church.[1] I have not met with any notice [other than the Prendergast incident above mentioned] of Holyrood having privileges of sanctuary in medieval times. I am inclined to think it owed the privileges of later days to its having become a royal residence. But I must not allow myself to be drawn to discuss the interesting questions connected with sanctuary derived from the connexion of any place with the monarch.[2]

There was a famous sanctuary at Wedale (St. Mary's Church at Stow, near Galashiels), a place rendered peculiarly sacred on account of its possessing what was supposed to be a figure of the Virgin brought from the East by King Arthur. And, according to Dr. Stuart, 'there existed a well-known road to the sanctuary of Stow, across the hills, called the *Girthgate*.'[3] Sanctuary was also the privilege of the church of St. Baldred at Tyninghame in East Lothian. Sanctuary was granted to the church of Inverleithan in the county of Peebles by Malcolm, the Maiden; and the grant has a certain historical interest on account of the reason assigned by the King for the honour thus conferred. Malcolm's charter in the Kelso Chartulary declares that in the church of Inverleithan the 'body of my son rested on the first night.'[4] Lord Hailes long ago made use of this charter to explode the fiction that the name of the Maiden bestowed on Malcolm IV. was on account of his per-

[1] *Breviar. Aberdon. pars estiv.* p. xc, b.

[2] Halkerston's *Treatise on the history, laws, and privileges of the Palace and Sanctuary of Holyroodhouse* supplies no evidence on the origin of the right of sanctuary attaching to the Abbey. It is scarcely possible that if the Abbey enjoyed any special privilege of this kind in the middle ages all evidence on the subject should have perished.

[3] *Sculptured Stones*, ii. p. lxvii. [4] *Liber de Calchou*, vol. i. p. 22.

petual chastity. Inverleithan was to possess 'in omni suo territorio' as full a privilege of asylum (*refugium*) as was possessed by Wedale or Tyninghame.[1]

There were several sanctuaries of lesser note. Fordun mentions four such in his chapter on the islands of Scotland (lib. ii. cap. 10). Sanctuary existed, according to this writer, at Hy Columbkille, at Helant Macarmyk, at Aweryne, and at Helant Leneow. Mr. W. F. Skene proposed as identifications for the last three places named, Eilean-more, Sanday, and Eilean-na-naomh.[2] On this matter Fordun may be trusted. But one hesitates to accept all the claims for the possession of the privilege that have been put forward on behalf of various other places in the Western Highlands and Islands. In some cases certainly there seems to be no evidence beyond local tradition; and nothing would be easier than to confuse the common rights of every parish church with the special privileges of sanctuary.[3]

On the other hand, it must be admitted that in the wild days of Celtic Christianity there would be a more frequently pressing need for protection being afforded to fugitives.[4] The famous 'Cross Macduff' in Fife, near Newburgh, about one-third of a mile from the boundary of Perthshire, seems to have been an ancient tribal sanctuary; and a very peculiar survival of the ancient and recognised custom of affording protection to those who could claim kin to Macduff lingered long. The subject has been dealt with by Dr. John Stuart, with his usual fulness and accuracy in the Preface to the second volume of his *Sculptured Stones*.[5]

[1] See Hailes' *Annals*, vol. i. p. 129.

[2] Skene's edition of Fordun in the *Historians of Scotland*, vol. ii. p. 39.

[3] The following places are alleged to have been sanctuaries: Kilmonivaig (near the modern Fort Augustus); Kingarth, in Bute; Lismore, the cathedral of Argyll; Kilcomkill, on the Sound of Mull; Kilmoluag, in the island of Raasay; Kilmuir, in the island of North Uist. And other names could be added. See *Origines Parochiales*, vol. ii. under the various names.

[4] See Lib. xxviii. *De civitatibus refugii* in the ancient collection of canons of the Irish Church, printed by Wasserschleben in his *Die irische Kanonensammlung*, pp. 111-116.

[5] Pp. lxvi-lxxvi.

The Abbey of Dunfermline, it has been supposed, possessed the rights of sanctuary, but the evidence does not appear to me to be quite conclusive that its right of affording asylum was other than that possessed by other churches having the right of sepulture.[1]

As regards the protection afforded to fugitives, whether in parish churches or in privileged sanctuaries, it would be a mistake to suppose that all the evils which, it is obvious, would attend such immunities in a settled and well-organised system of government such as we now enjoy, were consequent upon these church-rights in an age when the administration of justice was carried on with all the imperfections that attended the local courts of those tenants holding their lands *in liberam baroniam*, or even of the lords of regality. It is obvious that a feudal superior administering justice among those who stood to him in the relation of vassals, whose interests often came into collision with his own, must at times have been prejudicial to equity. Revenge is not always 'wild justice.' And animosity and prejudice, short of the spirit of revenge, are not wholly unknown even in modern times among the occupants of the magisterial bench. 'Justices' justice' does not, even now, always command respect. Certainly in barbarous or only half-civilised regions there must have been many cases when the immunities of parish churches and of sanctuaries served a beneficent and useful purpose. If nothing else, they made men pause, and gave time for the first flush of passion to subside. A distinguished student of history, whose sympathies are not ordinarily with the institutions of the medieval church, Henry Hallam, speaking of the rights of sanctuary, observes: 'Under a due administration of justice this privilege would have been simply and constantly mischievous, as we properly consider it to be in those countries where it still subsists. But in the rapine and tumult of the middle ages the right of sanctuary might as often be a shield to innocence as an immunity to crime. We can hardly regret, in reflecting on the desolating violence which prevailed, that there should have

[1] The evidence may be seen in Stuart's *Sculptured Stones*, vol. ii. p. lxvii.

been some green spots in the wilderness where the feeble and the persecuted could find refuge.'[1]

The rather scanty information supplied from our ecclesiastical records receives some valuable additions from the remains that have come down to us of early civil legislation. Some of these particulars may be given in a slightly abbreviated form.[2] In the Statutes (A.D. 1230) of Alexander II. we find enacted (1) of thieves and reivers (*raptoribus*) that if any of them flees to the church, and there penitently confesses that he has grievously sinned, and declares that for the love of God he has sought God's house for the sake of safety (*pro sua salute*), he shall have [the King's] peace in this manner:—he shall lose neither life nor limb, but shall restore whatever he has dishonestly taken, and shall pay the King's mulct (*emendam*) according to the law of the land. (2) Moreover he shall swear on the Book of the Gospels that for the future he will never commit robbery or theft. (3) If, however, he is unable to pay his due to the King (*i.e.* to pay his mulct) let him fulfil the rest of the points aforesaid, and in the same peace pass forth of the realm until he shall be reconciled to the King. (4) Furthermore it was enacted that if anyone accused of theft or robbery fled to the church, saying that he had fled to the church because he feared the exercise of over-hasty power (*potestatem temerariam*), and that he wished to prove his innocence, and purge himself according to the law, let him go in peace to the court of our Lord, the King, and there let him find borghs and pledges (*fidejussores et vadimonia*) to him by whom he has been accused, according to the custom of the realm. And if he shall purge himself according to the law of the realm let him abide in peace. (5) But if he shall be justly and legally convicted of the crime of which he has been accused, let him undergo the penalty due to such offence according to the law of the realm. (6) But if any of these flee to the church professing his innocence, and his inability through poverty to find borghs or pledges, he shall purge himself

[1] *View of the State of Europe during the Middle Ages*, vol. iii. p. 302.

[2] The provisions of the Act in its Latin form seem to apply to parish churches in general rather than to the more highly privileged sanctuaries.

in any place that shall seem safe and suitable in the opinion of the King or the Bishop. If he is found innocent, let him abide in peace; and if he is found guilty, let him undergo the sentence that is due. (7) Moreover homicides, and such as have broken their fealty to their feudal lords (*traditores dominorum suorum*), and those who have been accused of murder, or breach of fealty (*traditionem*), let them be lawfully accused, and if the accused flee to the church let the prescript law be observed.[1]

From the Statutes (1371) of Robert II. a manslayer is bound, after being duly summoned, to come forth from the immunity of the church in order to have the question legally decided whether his offence was murder and forethought-felony, or only homicide by chance-medley (*per chaud-melle*). In the former case he was to be banished the country for ever; in the latter he was to be restored to the protection of the Church. The Church's claim to protect the criminal from capital punishment was thus respected.[2]

In the Parliament of James III. in 1469 it was enacted that when the committer of slaughter, trusting in the immunity of 'halie Kirk and Girth,' fled to a sanctuary, the Sheriff was to come to the Ordinary, or, in places exempt, 'to the maisters of the Girth,' and inform them that such a man had committed such a crime on forethought-felony, 'for the quhilk the lawe grantis not, nor leavis not sik personnes to joyis [enjoy] the immunitie of the Kirk.' The Sheriff is to require the Ordinary to grant an inquiry 'on fifteen days' by an assize whether it be forethought-felony or 'suddantie' (the *chaud-melle* of the Statute of Robert II.). If it be found forethought-felony, he is to be punished according to the King's laws, while if it be found 'suddantie' he is 'to be restored againe to the freedome and immunitie of halie Kirk and Girth.' Before the removal of the accused from the protection of the Church the Sheriff is to find good surety to the Ordinary or the master of the Girth.[3]

The law, however, as so laid down, was sometimes defeated through excuses of the masters of Girth, being 'spiritual men' (and so claiming exemption from the

[1] *Act. Parl.* i. 401. [2] *Ibid.* i. 548. [3] *Ibid.* ii. 95, 96.

requirements of the law in this respect). For this reason it was enacted in 1535 that 'all Maisters of Girthes within this Realme make sufficient *responsal* men, Baillies or Maisters of Girthes under them, dwelland at the saidis Girthes or near therby.' These persons, not being ecclesiastics, if they failed to deliver up the accused according to the law, were to be rigorously punished, for their contempt, both in their bodies and goods.[1]

In 1567 a Commission was issued to deal *inter alia* with the subject of those who 'pass to the horn and enter into girth.'[2] But this brings us beyond our limits.

[1] *Act. Parl.* ii. 348. In the Statutes (or *Assisae*) which claim to be those of King David, and which, whatever be their real origin, bear the stamp of antiquity, we find an enactment for the protection of persons craving the King's peace, whether in *Girth*, or elsewhere. If anyone raises his fist to strike the suppliant, and the offence be proved on the evidence of two trustworthy men, the offender shall pay four cows to the King, and one cow to him whom he would have stricken. If the blow is actually struck (but without effusion of blood) six cows are to be paid to the King, and two to the person struck. If blood is drawn, nine cows were to be paid to the King, and three to the person wounded. If death follows on the blow, twenty-nine cows and one heifer (*colpindach*) are to be paid to the King, and satisfaction shall be made to the relations of the dead man 'according to the assise of the land' (*Act. Parl.* i. 320). Mr. E. W. Robertson (*Scotland under her early Kings*, vol. i. p. 258) reads as in the Ayr MS., 'XX^{IX}' (that is 180) for 'XXIX,' for '180 cows (nine times twenty) were paid as *manbote* for homicide throughout Scotia.' The emendation, which had been previously suggested (see *Act. Parl. Scot.* i. 279) is probably correct. The term Girth-hoill or Gyrthol (see *Act. Parl. Scot.* i. 279) is spelt very variously in the MSS. Among the variants are Girthstoll, Gritstol, Gyrsil, and Gyrsyld.

[2] *Act. Parl. Scot.* iii. 30.

CHAPTER IX

THE REVENUES OF THE CHURCH

(I) LANDS

The revenues of the Church were derived from lands, from teinds, and from offerings,—some of the latter coming in time to be regarded as 'dues,' and some of them purely voluntary. Of each something will be said.

The lands of Scotland held by the Church (including the monasteries) were wide in their extent. That extent can be roughly estimated by an examination of the records of the spoliation of the Church at the time of the Reformation.[1]

We have seen that the parish churches were ordinarily endowed with a portion of land. The earlier records show that a ploughgate was often a common endowment of a parish church in the south. In the north-west a half-davach, which was equal to two ploughgates, is a frequent measure of the land of the parish church.[2]

The nature of the tenure of church lands was in many cases of the most favourable kind. A grant in frankalmoigne, or, more fully, *in liberam, puram, et perpetuam eleemosynam*, was the most coveted of the feudal tenures. The lands were freed by such grants (when made without reservations) from all the burdens of secular service, often extremely onerous. By such tenure most of the episcopal and monastic lands, as originally granted, were held.

[1] See Keith's *History of Affairs*, etc. (Lawson's edit.), iii. 369-388 and the *Book of Assumptions*.

[2] See, for example, *Reg. Morav.* p. 2.

The question has been raised as to whether a grant in frankalmoigne freed the holders of the land from military service when called for by the Crown. The soundest opinion seems to be that tenants in frankalmoigne were freed from all secular exaction and service, except, probably, what services arose under the *trinoda necessitas*, or the obligation to join a general levy to resist foreign invasion, to assist in the building of the king's fortresses, and to assist in the construction and repair of the king's highways and bridges. But such tenants were freed from the ordinary burden of *exercitus*, or hosting, *i.e.* the sending a certain number of fully armed men each year to the king's host, where they were to be maintained at their own cost for the space of forty days.

It is plain that freedom from the obligation to render military service to the Crown could be granted only by the Crown. Hence when private persons desired to make a grant to the Church in frankalmoigne, such grant had to be confirmed by the Crown, or else, as is not uncommon, the grantor undertook to be himself still responsible for the *onus exercitus*. Thus, the Earl of Buchan in 1272 endowed an alms-house at Turreff, and after specifying with customary exactness the lands intended for the maintenance of the master, chaplain, and alms-men on his foundation, pledged himself to be responsible for all the obligations due by the lands such as hosting, aids, customs and exactions.[1] Again, Fergus, brother of Earl Robert of Strathern, bestows certain lands on the monks of Lindores *in liberam*, *puram*, *et perpetuam eleemosynam*, and adds 'we shall make it [the land] free of hosting, and of aids, and of all service and exactions.'[2] After the time of David I. a growing disinclination shows itself on the part of the kings of Scotland to cripple their power by surrendering in any way their right to demand attendance at the hostings. Thus, King Malcolm, on an occasion when there were special reasons why he should be generous, grants the lands of Conclud to the Bishop of Glasgow and

[1] *Reg. Aberd.* i. 31.

[2] *Chartulary of the Abbey of Lindores*, p. 27. Other similar undertakings to free the abbey from secular burdens will be found in the Chartulary.

his successors, but with the reservation, 'salvis exercitibus meis.'[1]

As donors who held direct from the Crown were required to have the confirmation of the Crown when making a grant of land in frankalmoigne, so in cases when the donor held of an over-lord inferior to the Crown, a confirmation of the grant by the over-lord was of course necessary. Thus, Amabel, wife of Norman of Leynal, made a grant of the lands of Scaithmore to the nuns of Coldstream, *in liberam, puram, et perpetuam eleemosynam.* But Patrick, Earl of Dunbar, who was Amabel's superior, in his confirmation substitutes for the more favourable grant the simple words *in perpetuam eleemosynam*, and then adds the clause, *salvo servitio meo.* By this change and addition it is implied that the feudal services due to him from the lands while in the possession of Amabel were still to be rendered by the new holders.[2]

In such cases holding in frankalmoigne practically came to mean freedom from rent, but not freedom from feudal services.

Occasionally we have instances in which the bishops exchange lands held in frankalmoigne for lands burdened in the usual way. In this manner tenants of ecclesiastics are found liable to the ordinary feudal obligations. Thus, Alexander II. granted in exchange three davachs of land to the Bishop of Moray to be held *in liberam et perpetuam eleemosynam* ; yet the land was burdened, as it had been formerly burdened, with forinsec service *in exercitu.*[3] Among the statutes ascribed to a Parliament of Alexander II., in 1220, there is a record of the penalties due from those on the lands of 'bishops, abbats, barons, knights, and thains,' who remained at home and came not to the host of the king at Inverness when he was 'in hosting against Donald Nelson.'[4] But on the whole the Church in Scotland seems to have had large advantages in this respect over the Church in England.

It is necessary to note carefully the reservations and limitations to be found in saving clauses of grants made in frankalmoigne. Thus, a grant is made in the fullest

[1] *Reg. Glasg.* i. p. 16.
[2] *Chart. of Priory of Coldstream*, pp. 3-5.
[3] *Reg. Morav.* 31.
[4] *Act. Parl.* i. 398.

terms by Robert I. to the monks of Neubottle; yet the deed contains the obligation of giving suit (*secta*) at the king's Justiciary Court in Edinburgh.[1]

Attempts were made from time to time by feudal superiors to disregard the liberties conferred by grants in frankalmoigne. In a bull of Pope Innocent IV., of the year 1251, one of the evils which the Pope sought to redress was that grants made to the Church *in perpetuam eleemosynam*, in which the grantors retained nothing except *exercitum ad defensionem regni et commune auxilium*, were treated as if they were ordinary feus in the hands of laymen.[2]

More especial attention is to be paid to the terms of the charter when the word *liberam* is wanting. In such cases it is very common to find reservations more or less numerous.

It is remarkable that we do not possess, so far as I am aware, any record of the amount of military service demanded from Scottish bishops and religious houses generally. In England it is different. There the amount of the *servitium debitum* is specified with minute particularity, and its variations at different periods can be noted. From the *Cartae Baronum* and the *Annual Rolls* may be collected the amount of the military service required from most of the bishoprics and larger monasteries. For our purpose it is enough to particularise a few cases in illustration of our subject. Canterbury was assessed at 60 knights; York, first at 7, and afterwards at 20; Winchester and Lincoln, each at 60; Worcester, first at 50, and then at 60; Ely and Norwich, each at 40; Salisbury at 32; Bath and London at 20 each; Hereford and Chester at 15 each; Durham, 10; and Chichester, 4. To these a few of the great religious houses may be added:—Peterborough, 60; Glastonbury, first 40, and afterwards 60; St. Edmundsbury, 40; Abingdon, 30; Coventry, 10; and many others with smaller obligations. What these figures set forth is not what extent of lands was held by each of these feudatories, but what extent was held by knight-

[1] *Reg. Mag. Sigil.* i. p. 14, No. 70.

[2] *Reg. Morav.* pp. 334 ff.

service, or, in other words, of how many knights' fees their lands consisted.[1]

While in England after the Norman conquest the great body of the lands of the bishoprics, granted in Anglo-Saxon times, was held of the Crown by the same tenure as that of the barons holding by knight-service, in Scotland much of the possessions of the Church was held in frankalmoigne and, except in the case of a general levy to resist foreign invasion,—a time when the maxim holds good that necessity has no law,—holdings in frankalmoigne were exempt from military service. As regards the bishoprics founded by David, the piety of that monarch seemed never satisfied unless the Church was granted every possible exemption and every possible indulgence. In 1309 we find Robert I. granting a charter to the bishop and chapter of Brechin, which declared their lands and possessions to be 'free from all secular service and exaction,' and at the same time provided that the obligations on lands which had been granted to the bishop and chapter by various benefactors should be exacted but exacted wholly from the founders and benefactors (*fundatoribus et infeodatoribus*). And the king's officers are directed, if the necessity arose, to distrain the head-feus of the founders, so that the lands and possessions of the Church should be entirely free from all burdens and exactions.[2]

The rare exceptions to the general immunity of the cathedrals and religious houses of Scotland only help to emphasise the contrast with the state of things in England. Thus, the monks of Melrose held lands at Halsington in the Merse for the twentieth part of the service of one knight, *quando commune servicium exigetur per totum regnum Scocie*.[3] And even in this case it would seem that a general levy was contemplated as the only occasion on which the demand should be made.

The grant of land in frankalmoigne, as has been said,

[1] See J. H. Round's *Feudal England*, pp. 249, 251.

[2] *Reg. Brech.* vol. i. 9.

[3] *Lib. S Marie de Melros*, p. 294. The 'twentieth part of the service of one knight' points to some form of scutage, or commutation of military service for a money payment.

freed it from the numerous services often demanded from tenants by their feudal superiors, and more particularly from 'aids,' an especially vexatious form of feudal impost. An example of the Church successfully defending the church land of Kilpatrick against a demand for an 'aid' made by Earl David, when holding the earldom of Lennox in ward, will be found in the Register of Paisley.[1] The favours thus bestowed upon the Church enabled the ecclesiastical holders of land to be in turn indulgent lords towards those who held land from them.

How far the lands of parish churches were held in frankalmoigne it is difficult to say. The grants to the bishops are frequently in this form, but the foundations of the parishes have in almost all cases passed from the region of record.[2]

The parish clergy were discouraged from farming more than the croft or glebe in the vicinity of their churches,[3] and the lands, if of any considerable extent, were let for a rent. The bishop's lands were ordinarily dealt with in the same way. In the case of the monasteries, lands in the neighbourhood of the house, and sometimes at a distance, by means of their settlements known as 'granges,' were often cultivated by the monks themselves and their men; and in some cases very extensive sheep farms were successfully maintained.[4] As is well known, Scotland owes much to the agricultural skill and industry of the monks.

The landed endowments of the Church were, alike in England and in Scotland, mainly the outcome of the devotional sentiment of private persons. The grants

[1] Pp. 166-8.

[2] The records of the sixteenth century exhibit tacks of land made by the bishops sometimes burdened expressly with the condition 'to serve the bischop in the king's weris' or 'faciendo servitia consueta in guerris seu exercitibus regiis.' See *Reg. Morav.* 392, 393.

[3] In the assize of King William it was enacted that ecclesiastics should live upon the fruits, rents, and emoluments of their church, and not be husbandmen, shepherds or merchants. *A.P.* i. 382.

[4] An excellent account of the possessions and agricultural labours of the monks of Melrose Abbey will be found in Cosmo Innes's *Sketches of Early Scotch History*.

made by kings were the grants of those who at that time could hold lands and dispose of them with as much freedom as any of their vassals. The lands of the Church can in no reasonable sense be regarded as 'State endowments.' The gifts of kings, though these formed by no means the larger part of the possessions of the Church, must be considered exactly in the same light as the gifts of any of their poorest subjects. The action of the State, when the State interfered at all, was solely to provide that grants made to the Church should not carry with them any privilege which would exempt the lands granted from the obligations which were due from them to the State.

CHAPTER X

THE REVENUES OF THE CHURCH

(II) TEINDS

1. *Classification of Teinds.*

TITHES, or teinds, as they are called in the Scotch tongue, constituted a large proportion of the revenues of the Church. Teinds (*decimae*), as the word was ordinarily employed, signified tenth parts of what was lawfully acquired year by year, either from the fruits of the earth and the produce of animals, or from the outcome of labour, skill, industry and commerce. Tithes were divided by the canonists into *real* and *personal*. The former consisted almost entirely of the crops and the young of domestic animals, together with wool, milk, butter and cheese. As products of the farm (*predium*) they are often spoken of as *predial* tithes. The latter, or *personal* tithes, are the tenths of the profits of industry, trade and the skill of the artisan.[1]

It is perhaps well to explain here a few other technical terms that occur in connexion with this subject in the medieval records. Garbal tithes (*decimae garbarum*) were the tithes of the sheaves (*garbae*) of all kinds of corn or grain (*bladum*), wheat, bear, oats, etc. These tithes are sometimes spoken of as the great tithes (*decimae majores*) as distinguished from the tithe of the young of sheep, kine, and other animals, of milk, butter, cheese, wool, etc.,

[1] We find tithes classified as 'predial, personal, natural and industrial' in a writ of Patrick Painter, Abbot of Cambuskenneth, in 1516. *Act. Parl.* ii. 390.

which are named the small tithes (*decimae minores*). In most parishes, though not in all, the tithe of grain formed much the more valuable part of the revenue derived from tithes.

During the medieval period it was the accepted doctrine that the payment of these tenths to the Church was *de jure divino*. Men often grumbled at paying their tithes, and often sought in various ways to evade the payment. Sometimes the ecclesiastical authorities had occasion to complain of 'sons of perdition,' as they styled them, who secreted their tithes, or retained them by force. And the 'ages of faith' present the spectacle of a constantly repeated struggle between the clergy and their unwilling parishioners. But Scotland was in this respect by no means singular. If England differed in this matter from Scotland, it was mainly in the greater vigour of its opposition to this ecclesiastical impost, and perhaps in the greater ingenuity exhibited in evading it. But, all the same, it was left to a later age to question the soundness of the theological position on which the ecclesiastics based their claim.[1]

2. *Payment of Tithes enforced by Ecclesiastical Censures.*

There is an accumulation of proof that a good deal of pressure, of one kind or another, was required to secure the payment of teinds. It is unnecessary to cite any of the numerous Papal Bulls enjoining the payment under pain of various ecclesiastical censures, culminating in excommunication. These spiritual terrors were held before the eyes of the people by the solemn 'publication and fulmination,' four times a year in every church, of what was known as the 'general excommunication.'[2]

[1] The obligation of the payment of tithe was admitted by all. But many among the greatest of the schoolmen, as Aquinas, and Hales, and, notably, our own Scottish John Major, held that the determination of the particular proportion—the *tenth*—was directly only *authoritate ecclesiae*, and indirectly by divine authority. The references to these and many other authorities will be found in John Selden's memorable *Historie of Tithes*, chap. vii. Selden makes particular mention of the fulness with which Major discusses the subject.

[2] One group of the Scottish church-statutes of the thirteenth century enjoins the publication of the general excommunication four times a year; another only three times. *S.E.S.* ii. p. 59 and p. 24.

Among the classes of grievous offenders 'cursed' on these occasions, with all the solemnities of bell, book, and candle-light, were (to adopt the vernacular form as it appears in the *Missal of Arbuthnott*, p. lxxi) 'Al fals teyndaris. And al thaim that halds or gerris hald thar awne or otheris mennis teyndis, outher be strynth, sutelte, or mycht fra thaim that sulde have thaim. . . . Al thaim that mynysis thair teynd for fraude, or malice of thaim that aucht to have it. . . . Cursit be thai syttand, standand, rydand, gangand, slepand, waikand, etand and drinkand; in hows and owt of hows. Cursit be thai fra the crowne of the hede to the soile fute. . . . Few be thar daies, other men bruke thar possessionis . . . thar duelling be with Dathan and Abyrone the quhilkis the erde swellyit for thar syn. And as this candil is castyn fra the sycht of men swa be thar saules castyn fra the sycht of God into the depast pot of hel ever to remane with cursit Nero the wikkyt emperour, and his cursit falowschip.'

3. *Civil Support for enforcing Payment.*

Formidable as were in those days the terrors of excommunication, it was found necessary to support them by royal injunctions. Thus, in the reign of Malcolm the Maiden (1153-1165), the king addresses a missive to his justiciars, sheriffs, and other officers, at the request of the Pope, enjoining as of divine institution the payment in full of teinds from all sorts of farm produce, including grain, wool, flax, calves, lambs, foals, kids, and young swine, together with butter and cheese. The royal injunction further directs that if anyone presumes to detain the teind, the sheriff should amerce him of the king's forfeit (*forisfactum*), viz. twelve kine, and compel the detained teind to be paid in full. If the sheriff is found to connive at the fault, the justiciar is to exact the king's forfeit from the sheriff, and to compel the full payment of the tithe. This royal injunction was repeated by William the Lyon, and by Alexander II.[1]

Similar mandates were issued by William in respect to

[1] *Reg. Glasg.* i. pp. 15, 70, 116.

St. Andrews and Moray. In the latter diocese, the Thane (*Theynus*), who at this period appears ordinarily as the administrator of crown lands, was to compel the peasant (*rusticus*,—*villanus*) to make payment, exacting also as forfeit a cow and a sheep. If the peasant had a lord other than the king, that lord was to require the tithe to be paid in like manner. And if either the Thane or lord was negligent, the sheriff was to exact the king's forfeit of eight kine.[1]

For a long period of Scottish history it was of scarcely less importance, for practical purposes, than the support of the Crown, that the great nobles should give effect to the Church's claims. As compared with later times the authority of the monarch was in some parts of the country relatively weak. Accordingly, we find the bishops seeking at various times the support of the more powerful of the greater barons. Thus, in the year 1225, Duncan, Lord of Carrick, solemnly promises in the presence of the Bishop of Glasgow, at an assembly of the clergy held at Ayr, that not only will he himself pay his teinds in full, but that he will compel his vassals (*homines*) and tenants to pay their teinds in like manner; and if that any resist he will lend the clergy a helping hand (*manum apponet adjutricem*). He further promises that if any of his vassals or tenants be excommunicated he will, after forty days have passed without amendment, confiscate their goods. An engagement in like terms was made the following year (1226) by the Earl of Lennox.[2]

There survives, in the Register of the bishopric of Aberdeen, an interesting example of the actual infliction

[1] *Acts of Parliament*, i. 90.

[2] *Reg. Glasg.* i. pp. 117, 119. In each of these two instruments we find the promise that 'he (the feudal superior) will not exact from the said clergy any corredy for work done by his serjeants, who are called kethres,' (*corredium ad opus servientium, qui kethres nuncupantur, a clericis non exiget memoratis*). *Corredy* was food and entertainment, or an allowance in lieu thereof. And the meaning seems to be that the bailiffs, or armed retainers of these nobles, were to enforce the payment of tithes without any charge on the clergy. The word *kethres* appears to be of Gaelic origin (see Jamieson's *Etymological Dictionary of the Scottish Language*, s.v.) and its use in this connexion points, as I would conjecture, to the employment of Highlanders for this kind of service.

of excommunication upon a large number of the inhabitants of the lordship of Fermartyne for their neglecting to pay 'second tithes' (of which something will be said hereafter) to the Bishop of Aberdeen. The lordship had been granted by King Robert II. to his eldest son, the Earl of Carrick, who in turn granted it to Sir James de Lyndesay, Lord of Crawford. While the lordship had been in the Crown a tithe of the rents of the tenants had been paid to the bishops of Aberdeen; but, apparently, after the transfer of the land the sheriffs considered that they were no longer required to compel payment. And, as a matter of fact, the tenants on the land had made no payment for three terms. Whereupon Adam de Tynningham, Bishop of Aberdeen, excommunicated Lyndesay's bailie and collector of rents and more than fifty of the tenants (the names of all whom are recorded). Solemn pledges were given that they would amend their ways; and the culprits appeared before the bishop in the chapel of his manor of Rane on 9th March, 1382-83. He then compelled them to swear that they would submit for their offences to whatever penance was enjoined, and, having received their oaths, he gave them absolution according to the rites of the Church. This done, he rated them soundly, and frightened them by pointing out that by reason of their having received the Eucharist at the preceding Easter, while yet excommunicated, they had fallen under grave suspicion of heresy. He told them that they were in strictness bound to appear before him in the Cathedral of Aberdeen on the Thursday in Holy Week, or some other solemn holy day, barefooted, and bareheaded, and without their girdles, each with a candle in his hand, and there, in the sight of all the people, humbly to seek absolution from him. But, as of grace, he would not on this occasion inflict this punishment.[1]

4. *What Things were Tithable.*

Notwithstanding the threats of the Church and the penalties enforced by civil authorities, the collection of

[1] *Reg Ep. Aberd.* i. 163-166.

the teinds of the farm was, as we shall see, very often a troublesome task.

The predial teinds were exacted, as it is put by one of the statutes of the Scottish Church, 'on all things that are renewed (*innovantur*)' from year to year. Under this denomination were included the young of sheep, kine, etc., grain of all kinds (*bladum*), hay, flax, garden produce, and the produce of fruit trees. In 1399 a question arose as to whether it was to the Bishop of Moray or to the Vicar of Elgin that the tithe of the leeks and kail growing in the gardens in the town of Elgin was justly due.[1]

Among tithable things that do not readily come under the definition given above were peats and underwood (*silva cedua*).[2]

The tithes of living creatures include the young of kine, sheep, goats, swine, and horses; barn-door fowl and geese, together with (as products of living things) eggs, milk, butter, and cheese.[3] Wool, as a thing 'renewed' every year, was tithable, and was a valuable source of revenue.

Tithe was exacted on fish, whether caught in the sea or in rivers. The law of tithe extended to the spoils of the chase. Even hawking (*aucupatio*), as we are expressly told, was bound to pay its toll of tithe.[4] I have been surprised not to find pigeons expressly mentioned in the Scottish statutes. In England they were tithable. And, though not expressly named, there is no reason to suppose that in Scotland they were exempt. The absence of reference to pigeons perhaps points to the 'dow-cot'

[1] *Reg. Morav.* pp. 213, 328.

[2] *Silva cedua* has been sometimes, but quite incorrectly, explained as *fallen timber*. We are so fortunate as to possess a definition of the term as given by the Council of London in 1344. 'Declaramus provisione concilii, sylvam ceduam illam fore, quae cujuscunque existens generis arborum in hoc habetur, ut caederetur, et quae etiam excisa rursus ex stipitibus aut radicibus renascatur.' *W.C.* ii. p. 705. *Silva cedua*, then, includes coppice-wood, and 'loppings and toppings.' In many places faggots of underwood would be a large part of the fuel. In England the statute, 45 Edw. III. c. 3 enacts that timber trees of over twenty years' growth were not tithable.

[3] Geese are not very often mentioned, but we have 'pulli aucarum decimantur' at *S.E.S.* ii. 44.

[4] *S.E.S.* ii. 21.

being a less frequent adjunct to a large house than it came to be in subsequent times.

It is unnecessary to inquire whether the tithe of mills, which was always eagerly claimed, comes under the head of *real* or *personal* tithes, or whether, to adopt a classification of some canonists, it is to be regarded as 'mixed.' We are not engaged in investigating the principles of Canon Law: it is enough for us to know that the claim for the tithe, though often resisted, was everywhere insisted on.

5. *Personal Tithes.*

Coming to purely *personal* tithes, the rule was that the profits of the mechanical arts should be ascertained on oath. But necessary expenses were deducted in estimating the profits.[1] A special provision was made in the case of poor labourers, who worked for hire at wages of half a mark or less, that it would suffice to exact three 'oblations.'[2] How we are to interpret this provision is not at all obvious. It may possibly mean that the clergy were to be content with the offerings, or oblations, that were required to be made at mass on the festivals of Christmas, Pasch, and Whitsunday. But this would be equivalent to not exacting any tithe, for all persons had to make their oblations at the three great festivals. The minimum oblation on these occasions appears to have been a halfpenny (*obolus*), and perhaps what is meant is that the poor labourer was not required to give more than a halfpenny on three separate occasions.[3] That the oblations referred to in the Scottish statute were distinct from the required oblations at the festivals seems to be supported by an ordinance of the Council of Ferns (in Ireland) held in the year 1240.[4]

[1] *S.E.S.* ii. 44. [2] *S.E.S.* ii. 23.

[3] The Lambeth MS. reads *obulos* for *oblationes*; and although I believe *oblationes* is the true reading, it is not improbable that the Lambeth MS. gives the *sense* correctly.

[4] 'Praecipimus quod de negotiatione stipendiis servientium (deductis necessariis expensis) decimae, ut decimae, non ut oblationes, integre persolvantur; quia cum sub oblationis specie decimae praestantur; nonnunquam ecclesiae non solum justis decimis, sed oblationibus debitis defraudantur.' Wilkins' *Concilia*, i. 681.

6. *Disputes between Parishes.*

While there could be no disputes as to what parish church was entitled to the tithes of corn, hay, and other crops, it was very different in respect to the young of cattle, sheep, and horses. These might be moved for pasture from one parish to another; and innumerable contentions arose between the clergy of neighbouring, or other parishes on this subject. Some of the attempts made by Scottish synods to deal with these problems may here be mentioned. If cattle or sheep were driven from one parish to another for pasture, each parish was entitled to tithe *pro rata temporis*, always provided that no allowance was to be made to any parish in which the herd or flock had been for any time less than a month. The same rule applied to the horses of the farm.[1]

Again, if throughout the year animals are herded for the night (*cubant*) in one parish, but are pastured in another, the tithes are equally divided between the two. But if the cattle are herded for the night in one parish, and are pastured partly in that parish and partly in another, then the latter receives only one-fourth of the tithe. Once more, if a farmer buys sheep with their lambs from another parish, and brings them to his own farm, he pays the whole tithe of lambs, milk, and wool to the priest of his mother church, *i.e.* the church of the parish in which his home is situated; and the priest of that church is bound to settle with the priest of the parish where the sheep had been purchased. The proportion of the tithe due to each was calculated from the date of the conception of the animals to the date when the young ceased to suck the dams. These rules correspond pretty closely with rules laid down in the synods of various English dioceses.[2]

[1] *Averia* is sometimes applied to other animals, such as oxen, employed on the work of the farm; but the word is generally used to signify horses for the plough or cart. This signification is retained in the Scots word, *aver*.

[2] Compare more particularly the statutes of Durham (1296) and of Worcester (1240), *W.C.* ii. p. 28, and i. p. 674. See also the Constitutions of Archbishop Winchelsey (1305), *W.C.* ii. 279, and Lyndwood's gloss on the same in *Provinciale*, pp. 197, 198.

7. *Regulations as to Tithes of Fishings.*

Rules had also to be settled with respect to the claims of sea-board parishes frequented by fishermen. Fishermen paid the tithe of the fish they caught, not to the church where the fish was landed, but to the church of the parish where their home was situated, except when they settled sufficiently long in another parish to find it necessary to procure there some kind of hut, cottage, or other dwelling (*mansiuncula*).[1] With this statute it is worth while to compare the agreement made in 1222 between the Priory of St. Andrews and the Abbey of Dryburgh. The parish of Kilrethny (Kilrenny, in Fife) was one of the parishes granted *in proprios usus* to the monks of Dryburgh.[2] It was agreed that fishermen from Kilrethny coming to the harbour of St. Andrews, or fishing there, should pay their tithes to their mother church, and not to St. Andrews. A rule based on the same principle was to apply to the St. Andrews fishermen coming to Kilrethny.[3] But there were exceptions to this general rule. By way of special favour, as it would seem, William I. commanded 'all who fish around the Isle of May to pay to God and the aforesaid church of All Saints of the May their right tithes.[4] This was a valuable grant, for besides the Scotch fishermen, Englishmen, Frenchmen, and Flemings resorted to this neighbourhood for the sake of fishing.

8. *Money Equivalents of Tithes. How Eggs, Milk and Cheese were tithed.*

The Church, as we have seen, was entitled to the tenth lamb, tenth calf, tenth kid, and so forth. But what was to be done when, as would often happen among

[1] *S.E.S.* ii. 23.

[2] In 1546 the teind fish at Kilrenny was held by John Beaton of Balfour of the vicar of Kilrenny, 'with consent of the abbot of Drybureht and his convent' who were 'parson of Kilrenny and patrons of the vicarage.' *Act. Parl.* ii. 475.

[3] *Lib. de Dryburgh*, p. 71, and *Reg. Priorat. S. Andr.* p. 323.

[4] *Records of the Priory of the Isle of May*, carta 12.

the poorer folk, there would not be as many as ten, or when, as on larger farms, the number exceeded ten, or its multiples, by a fraction? The difficulty thus created suggested the reckoning of fixed sums of money as equivalents to the tithe of each youngling. Were the enactments of the statutes of the Scottish Church upon this subject exhaustive, or even tolerably full, we should possess evidence of great value for determining prices in the thirteenth century. We have, however, to be content with very meagre information. A halfpenny (*obolus*) was ordered to be taken as the tithe of a lamb, or of a sucking pig. A farthing (*quadrans*) was the equivalent of the tithe of a kid.[1] Our scanty information from original Scottish sources may be supplemented from contemporary ordinances in force in England. The Provincial Constitutions of York (1250), and those of Canterbury (1305), direct that if there be but six lambs, six halfpennies (*oboli*) shall be paid as tithe; if there be seven, the priest may take the seventh on his paying to his parishioner three halfpennies. If there be eight, the eighth may be taken on paying a penny: similarly, if the ninth lamb be taken, the priest paid a halfpenny. All this goes to show that in England, as in Scotland, in the thirteenth century a lamb was valued at fivepence.[2] A calf was apparently valued at ten pence.[3]

In dealing with the tithe of eggs, it was agreed to assume that each hen laid twenty eggs in the year, or, in other words, two eggs were demanded for each hen.[4] In tithing milk, as was obviously fair, it was ordained that the tithe should be sought only for those months when the cows or sheep were in milk.[5] If a cow's milk was not employed for making butter or cheese, but taken by the calf, the tithe of its value was estimated at three pence.[6] If a practice followed in England may be taken

[1] *S.E.S.* ii. 44.

[2] *W.C.* i. 698; ii. 278. The date of *Regiam Maiestatem* is uncertain; but if we may use it legitimately to illustrate our subject we find there (lib. iv. cap. 16) a sheep valued at sixteen pence.

[3] *S.E.S.* ii. 21. *Regiam Majestatem* (iv. 31) values a heifer (*juvenca*) at three shillings; a cow (*vacca*) at six shillings.

[4] *S.E.S.* ii. 44. [5] *Ibid.* 51. [6] *Ibid.* 47.

to represent Scottish usage, as to which we have, I think, no evidence, the tithe of milk (not used for making butter or cheese) was effected by giving all the milk of every tenth day to the Church. Similarly a somewhat obscure statute[1] as to the teinds of cheese is to be explained. It seems to be assumed that cheese-making extended to 140 days in the year. The clergyman took all the cheese made during 14 days; and the teind cheeses were to be made when the milk was most abundant.

It would seem that the price of foals varied so much that no fixed sum was assigned as tithe, but the tithe was estimated at the price current at the time.[2]

9. *Difficulty of collecting Tithes.*

The collecting of the tithes was often attended with difficulty when the parishioners were inclined to be fractious. The 'reasonable and ancient custom,' as the statutes declare, was that the sheaves of cut corn should be brought to the barns, and there be tithed. But 'sons of perdition' were wont either to leave the tithe on the ground, or, worse still, to scatter the tithe through the fields.[3]

And when the tithes had been collected the troubles of the rector, or vicar, were not necessarily over. We come across frequent references to difficulties being put in the way of the clergyman disposing of the tithes after they had been gathered. In one statute we find a condemnation of certain feudal lords (*feudorum domini*) who forbade their vassals buying the tithes from the rectors.[4] In remote places, and where facilities of carriage to a good market were few or none, it was in the power of a feudal superior, whose tenants felt bound to obey even his unreasonable commands, to impoverish, or ruin the clergyman by instituting a 'boycott' of the sale of his tithes. The synodal statutes of Aberdeen direct that those who act thus, or interfere with the priest's free disposal of his tithes shall be excommunicated by their priests.[5]

[1] *S.E.S.* ii. 46. [2] *Ibid.* p. 47. [3] *Ibid.* 24.
[4] *Ibid.* 41. [5] *Ibid.*

But it would seem that the ecclesiastical law needed to be reinforced by the law of the state. In 1424 and 1425 the Scottish Parliament enacted that 'na man let [hinder] thame [the ministers of haly kirk] to set thar landis and teyndis under all payne that may folowe be spirituale law or temporall.'[1]

10. *Questions as to Tithes of Hay and of Mills.*

There is a statute in the body of laws, entitled General Statutes of the Scottish Church, which runs as follows: 'We ordain concerning the tithes, of hay and of mills that they be paid in full; and let those who will not pay them after the third admonition be excommunicated.'[2] The conjunction in this passage of things so little related as hay and mills, is, I have no doubt, to be accounted for by the fact that the obligation to pay tithes, both on hay and on mills, had been questioned. With regard to hay, it was alleged that in many cases lands had been conferred on parish churches with a view to being an equivalent for the tithe of hay, which ought not therefore to be exacted. That it was not customary, even as late as the twelfth century, to pay tithe on hay in the French possessions of the kings of England, was declared on oath by the barons of Normandy, in 1205.[3] And that, at all events sometimes, land had been really given to the church with a view to escape the tithing of hay is acknowledged in Bishop Cantilupe's (Worcester) *Constitutions* of 1240.[4] It is not so easy to understand the grounds upon which resistance was offered to the tithe of mills. These might naturally be regarded as affording as much right to tithes as any other industry. Yet we find Pope Alexander III., about the year 1170, directing the Archbishop of Canterbury and his suffragans to compel their people, if need were, by the penalty of excommunication, to pay their tithes of the outcome of mills, of fisheries, of hay, and of wool.[5]

[1] *Act. Parl.* ii. 3, 9.

[2] *S.E.S.* ii. 23.

[3] See J. Robertson's note, *S.E.S.* ii. 265.

[4] *W.C.* i. 674.

[5] *Decret. Greg. IX.* lib. iii. tit. xxx. cap. 5.

The manner in which mills were tithed was by paying a tenth of the multure, if the mills were worked by the proprietor, or a tenth of the rent, if the mills were leased.

The *Registrum Episcopatus Moraviensis* has preserved an interesting document which bears on this subject. It is a mandate (A.D. 1251) of Innocent IV. addressed to the bishops of Lincoln, Worcester, and Lichfield, directing them to investigate, and, if necessary, to restrain certain evil practices which, as was alleged, had grown up in Scotland. The young king, Alexander III., was at the time only ten years old, and the Pope attributes to his guardians those wrongs done to the Church, which he deplores. Among the many evils complained of was the attempt made by the magnates to prevent the payment of the tithes of hay, pastures and mills.[1] It seems impossible to say precisely whether the statute, which we have cited, preceded or followed the papal mandate. But certainly no great distance of time intervened between the two.

Among minor regulations as to the division of teinds between parson and vicar we find the following among the Scottish statutes of the thirteenth century. 'The teinds of gardens in cities and burghs, whatever be the nature of the crops, pertain to the vicar. But the teinds of gardens in vills, if growing corn, pertain to the parson; of other crops the teinds pertain to the vicar. Flax, wherever it is grown, pertains to the vicar.'[2]

11. *Exemptions from Tithe.*

It is worth recording that several of the religious houses were granted by the Pope the special privilege of being exempt from the payment of tithe on fallow-land (*novalia*) of their own brought under cultivation by their own labour or at their own cost, and from the payment of tithes on their calves, lambs, etc. (*de nutrimentis animalium vestrorum*).[3]

[1] *Reg. Morav.* p. 334. The document is also printed in *S.E.S.* ii. 242.

[2] *S.E.S.* ii. 21.

[3] *Reg. Pr. S. And.* 80: *Chartulary of Lindores*, p. 109; *Records of the Monastery of Kinloss*, p. 105-106, etc. On the meaning of *nutrimenta animalium*, see the note in *Chartulary of Lindores*, p. lxxix. More than one writer of repute has supposed that it means fodder or pasture; but its true meaning is the young of animals.

12. '*Second Teinds*,' *and the King's* '*Teind Penny*' *from Escheats, etc.*

The term 'second tithes' was a name applied to certain grants made to the Church, by the king or other feudal lord, which were not, apparently, regarded as really obligatory, in the sense in which tithes properly so called were held to be.[1] A charter of highly doubtful, or more than doubtful authenticity, assigns the first grant of 'second tithes' to King David in 1136. But, whether the charter be authentic or not, it is likely enough that it represents a fact in making David the first grantor of the second tithes, or teind penny, to the Church of Aberdeen. The term 'second tithes' is not indeed used in the document referred to, but that which is afterwards known as the 'second tithes' is sufficiently described. Several of the successors of David confirm the grants made by him. And we learn that 'second tithes' consisted of a tenth of rents payable to the king from his thanages in the shires of Aberdeen and Banff, and from other landed possessions; and also of a tenth of fines and escheats of the king's courts. Later we find that a tenth was granted from the profits arising from certain feudal casualties.[2] As the matter is put in a confirmation of 'second tithes' to the Bishop of Brechin in 1413, the tenth was given 'from all and singular profits pertaining to our lord the king . . . within the sheriffdom of Kincardine, namely, for ward, relief, marriage-tax (*maritagium*), fines, escheats and other issues of the courts of justiciar, chamberlain, and sheriff.' And it was further granted that if, in any case, ward, relief, and the marriage-tax were remitted by the royal favour, nevertheless the Church was not to suffer. The 'teind penny' was to be allowed, in such cases, when the sheriff was presenting his accounts.[3]

From the same charter we learn that the 'second tithes'

[1] I do not feel confident as to this. The lands, no doubt, had already paid tithe on their produce; and hence presumably the term '*second* tithes.' But fines, escheats, and issues of the courts might be regarded as liable to 'personal tithes'; and the words which speak of their being *granted* or *given* may refer only to their particular destination, as to this or that cathedral, or monastery.

[2] *R.A.* i. pp. 4, 18, 50, 72.

[3] *R.B.* i. p. 35.

of the county of Forfar were paid by the king to the Prior of Restenneth.

In a charter of confirmation, granted by David II., we have a full account of the privileges of the abbey of Holyrood, at Edinburgh. From the first foundation of the monastery there had been a royal grant of 'the tenth part of all profits, escheats and fines from all our courts whatsoever, as well from the chamberlain and justiciary courts, as from the courts of sheriffs and of provosts of burghs, and in any other mode whatsoever accruing to us, between the water of Avyn (the Almond Water) and Colbravncepeth (Cockburnspath).'[1] The western and eastern limits point to the boundaries of the modern counties of Midlothian and East Lothian respectively. The king also granted to the canons of Holyrood the tithe of all the whales, seals, and porpoises[2] taken between Avyn and Colbrandespeth.[3]

David I., the restorer of the Bishopric of Glasgow, granted to that see the still more liberal allowance of the 'eighth penny' from all his courts throughout the whole of Cumbria. This, I take it, means that an eighth of the fines, escheats, and other issues of court was to be paid to Glasgow.[4] There is no question that the 'eighth penny' was a grant for which no ecclesiastical obligation could be pretended.

In granting the tithe of fines, escheats, and other issues of court, the practice of the kings was sometimes followed

[1] *Reg. Mag. Sigil.* i. p. 72.

[2] Cetis et marinis belluis.

[3] *S.E.S.* ii. 64.

[4] The phrase *de omnibus placitis meis* probably signifies 'from all my courts,' but, if it be contended that *placita mea* is to be taken in the restricted sense of the 'four pleas of the Crown,' robbery, murder, rape, and arson, the escheats would still be of much value, for all the goods of those convicted were forfeited to the Crown. The charter in which this grant is recorded (*R.G.* i. 12) bears evident marks of antiquity. The eighth penny was to be paid whether that which fell to the Crown was 'in money or cattle'; for so we must understand 'aut in denariis aut in pecunia.' In other old Scottish charters there can be no question: for example, Moregrund, Earl of Mar, grants to the canons of the Priory of St. Andrews 'ut habeant communem pasturam ad pecunias suas cum pecuniis meis.' *Reg. Pr. S. And.* p. 247. See also pp. 249 and 265.

[From 1265 until 1288 the eighth was paid to the bishop of Glasgow from the *lucra justiciarie*. *Exchequer Rolls*, i. 27, 33, 36, 37.]

by the great nobles. Thus, Moregrund, Earl of Mar, a generous benefactor of the Priory of St. Andrews, grants the tithe 'de placitis meis' and also the tithe of the feudal casualty of 'reliefs' (*de releuiis meis*),[1] or the payments made by heirs on admission to their inheritance. Similarly, as we learn from the *Chartulary of Lindores*, the Earls of Strathern were in early times accustomed to pay to that monastery the tithe of their can and rents (*de cano et redditibus*) from Strathern.[2]

13. *The Tithe of the King's Can.*

In the records of grants made to the Church by Scottish monarchs we sometimes meet with the phrase, the tithe of the king's can. The word can, or chan, appears to be used in general to signify some custom or due payable to the Crown. The can of ships (*cania navium*, or *cana*, or *canum navium*) cannot mean anything else than some tax or custom payable on ships at certain ports. The word is found in connexion with toll (*theloneum*), where we find the monks of the Isle of May declared by the king to be free *a cano et theloneo, et ab omni alia consuetudine*.[3]

There was a grant by the king of three marks a year to the Priory of St. Andrews towards supplying their dress to the canons (*ad vestitum fratrum*) from his chan of ships at Perth.[4] And a tithe of the can of ships which came to Aberdeen was alleged to have been given by David I. to the cathedral of that city; and, whether the alleged charter of David is genuine or not, the payment was made, and the grant was confirmed by subsequent monarchs, and appears also in Papal confirmations.[5]

It is plain that can was sometimes paid in kind. Thus, before 1153, the king declared that he 'had given and conceded to God and the Church of St. Kentigern of Glasgow, in perpetual alms, my whole tithe of my chan in cattle (*animalibus*) and swine, from Stratgrif (Renfrewshire), and Cunningham, from Kyle and Carrick, every

[1] *Reg. Pr. S. And.* p. 247. [2] p. 27.
[3] *Records of the Priory of the Isle of May*, p. 11.
[4] *Reg. Pr. S. And.* p. 57. [5] *R..A.* i. pp. 4, 5, 7, 8, etc.

year, unless when I myself shall come to sojourn there and consume as provisions my chan.'[1] But it is a mistake (into which Mr. Cosmo Innes has fallen)[2] to regard the payment *in kind* as entering essentially into the definition of *can*. The word simply signifies a tax, tribute, or custom, whether paid in kind or in money.[3]

The payment of a tithe of minerals does not appear to come under ecclesiastical law ; and grants of this kind are to be regarded, like 'second tithes,' as voluntary expressions of a pious liberality. Among King William's princely gifts to the monastery of Dunfermline we find 'omnem decimam de auro quod michi eveniet de Fif et Fotherif.'[4]

[1] *R.G.* i. 12. Skene treats of the word, '*canum, canna*' in his *De verborum significatione*, and rightly supposes it to be of Gaelic origin. He holds that it means 'tribute or duty, as Cane fowles, Cane cheis, Cane aites, quhilk is paid be the tenant to the maister, as ane duty of the land, specially to kirk-men and prelats.'

[2] *Scottish Legal Antiquities*, p. 204.

[3] For a further discussion on second tithes see *Chartulary of Lindores*, pp. lxiv-lxviii.

[4] *Act. Parl.* i. 385.

CHAPTER XI

THE REVENUES OF THE CHURCH

(III) OFFERINGS

Besides the revenue derivable from church lands and from the teinds, the parish clergyman received such money as was offered by the parishioners on various occasions, some of which offerings came in time to be regarded not as voluntary, but as 'dues.' Again and again, in the Scottish ecclesiastical law, we find the strictest injunctions against the clergy making a charge for the administration of any of the sacraments. 'Neither sacraments nor sacramentals were to be sold.'[1]

Judging rightly that the terrors of approaching death would tend to make men more especially amenable to pressure, the church legists enjoined that extreme unction should be administered freely and without charge.[2] Even at Easter, when the Easter-offering of every parishioner was expected, and indeed eventually came to be regarded as a 'due,' the priest was charged not to refuse the sacrament to those who had not made their offering. The injunction was necessary, for the statute refers to the existence of a practice of certain priests who, at the communion of the laity on Easter Day, retained the Host in their hand till the payment was made; as the statute puts it with an outburst of indignation, the priests were thus saying, in

[1] *S.E.S.* ii. p. 52. Among what were designated 'sacramentals' (*sacramentalia*) are sacred rites, such as the sprinkling of the people with holy water, benediction by the priest at mass, etc. See Ferraris, *Bibliotheca Prompta*, s.v. *Peccatum*, §§ 47-50.

[2] *S.E.S.* ii. pp. 34-35.

effect,—in the language of Judas,—'How much will ye give me and I will deliver Him unto you?'[1] But voluntary offerings were frequent and numerous. There were few occasions of importance, when the priest was called to perform any of the sacred rites for a parishioner, that did not naturally call forth an offering. Marriages, baptisms, burials, would each, as was only natural, bring in a gift, larger or smaller, to the clergyman. At making confession it was not uncommon, at least in England, to make an offering to the priest, known as 'shrift-silver.'[2]

At all events, with regard to some of the rites of the Church, we have positive testimony that they were occasions of payments to the clergy. In an undated charter in the *Register of the Priory of St. Andrews* we find a munificent gift to Peter of Campania, for services rendered to the priory, of the whole barony of Kyrkness, with the tithes both greater and less, with many other perquisites; but he was not to be entitled to 'mortuaries, oblations, sponsals, purifications, and *baptistaria*.[3] Similarly, in the time of King William, in an agreement between the canons of St. Andrews and the Kelledei, while the latter were to possess the teinds of certain lands the former were to enjoy sponsals, purifications, oblations, baptisms and burials.[4]

In our ecclesiastical documents we often meet with the word 'obventions' (*obventiones*) in descriptions of the profits of a parish. It seems usual to signify, in a general way, all the income not derivable from teinds. The word 'oblations' (*oblationes*) came in the technical

[1] *S.E.S.* ii. 40.

[2] Thus, about 1400, in a satirical poem entitled *Jacke Uplande* (Wright's *Political Poems*, ii. p. 46), Jacke accuses the parish priests of refusing to assoil their parishioners, 'withouten schrift silver.'

[3] *Reg. Pr. S. And.* p. 177. The context leaves no doubt as to the sense; and, though rare, instances are to be found of the word *baptisterium* signifying, as Ducange (s.v.) puts it, 'obventiones et reditus sacerdotum ex baptismis.' The practice in the medieval Church of England of the woman after child-birth giving something to the priest on the occasion of the service of purification is indicated in the rubric of the first English *Book of Common Prayer*, where the woman is directed to offer her 'accustomed offerings.'

[4] *Reg. Pr. S. And.* 318.

language of the medieval Church to be usually confined in its meaning to a particular kind of offerings, namely, the money offered by the laity at mass.[1] The devout would offer frequently; and at the great festivals of Easter, and Christmas, and the feast of the patronal saint of the church, and sometimes on the feast of the dedication of the church, an offering, sometimes called 'the mass-penny,' was expected from every adult, or at least from every household. The very poor would offer no more than a halfpenny (*obolus*), and the well-to-do would give according to their ability and generosity. In theory, all through the medieval period the offerings at mass were held to be voluntary, but in practice the offerings on the three or four occasions mentioned came to be regarded as dues.

Occasionally the word *oblatio* seems perhaps to be used in a wider sense, as when Richard, Bishop of St. Andrews (1163-1178), grants to the prior and canons regular 'the oblation of the Pentecostal processions of our whole diocese.'[2]

The offerings (*oblationes*) of the devout laity at mass must have been, in some parishes, a considerable source of revenue. And there is no reason to doubt that in Scotland, as certainly in England, at Easter, at Christmas, and on the day of the patronal saint of the church, an offering from, at least, every household in the parish was expected, and, as has been said, came eventually to be enforced as a 'due.' That it was the custom to offer on other occasions, at least in the case of the well-to-do, is evident from the household books that have come down to us. The poor keep no accounts; and I do not think we possess any personal accounts of farmers, or merchants, artisans and tradesmen of the burghs till a period too late for our purpose. The material for an inquiry into this subject is more abundant in England than with us. But at least the practice of the royal house can be gathered from such books as the *Accounts of the Lord High Treasurer*

[1] See Lyndwood's *Provinciale*, lib. i. tit. 3. 'Specialiter vero loquendo dicitur Oblatio id quod in missa offertur sacerdoti, quae in praecipuis festivitatibus debita et necessaria est.'

[2] *Reg. Pr. S. And.* p. 133.

of Scotland, edited by Dr. T. Dickson. James III. and his Queen were accustomed to offer each 'ane croune,' valued in the accounts at xij shillings. James IV. most frequently offered at mass 'ane demy of gold,' valued at xiv shillings, and occasionally 'ane vnicorne,' valued at xviij shillings, or 'ane angel' (xxiv shillings). In 1497, on Pasche day, he offered 'in the mornyng quhen he tuk his sacrament . . . xxiij shillings'; and 'at the hye mes, that samyn day . . . xiiij shillings.'[1] With these may be compared the offerings of a great English nobleman who was a contemporary of James IV.,—the fifth Earl of Northumberland. On Christmas day 'my lord offered at Highe Masse xij pence, and my lady viij pence,' and at Easter at Highe Masse the same sums, and 'the lord Percy and my yonge masters, every of them j penny.'[2]

In the extent of their liberality the Scottish kings compared not unfavourably with the English monarchs, their contemporaries. In 1502 the Queen of England offered at High Mass v *s.* At Christmas, in the same year, she offered v *s.*, and 'for her howselle the same day xx *d.*' In 1538, Henry VIII., 'at takyng his rights in the mornyng' offered vi *s.* viij *d.* And his offering at mass was occasionally xx *s.*[3] It would be interesting to possess a record of the offerings at the altar of Scottish kings at an earlier date, but such records are wanting. Edward I., during his warlike visits to Scotland, continued to give his usual oblation of seven shillings at the mass.[4]

[1] Canon Simmons has pointed out that 'a sum was paid on each occasion by *communicating* independently of what may have been given at the offertory.' *Lay-Folks Mass-Book* (Early English Text Society), p. 239. This payment was said to be 'for the howselle' or 'at the howselling,' as in the passage about to be cited with respect to Elizabeth of York. 'Taking one's rights' was also used for 'being howselled' or communicated. Thus, James IV., on 'Payce Day,' 1491, offered xviij *s.* 'quhen he twke his rychtis in the mornyng.' *Accounts of the Lord High Treasurer*, p. 198.

[2] *Archaeologia*, xxv. pp. 320-323.

[3] See the *Privy Purse of Elizabeth of York* (Nicholas), p. 27, and *Privy Purse, Henry VIII.* pp. 371, 140.

[4] So it was at Kirkcudbright, Dumfries, Annan, and churches in the neighbourhood. See *Liber Quotidianus Contarotulatoris Garderobae*, pp.

We have seen how in the thirteenth century it was not unknown for Scottish priests to refuse to give the sacrament to the parishioners until they had paid their offering at Easter. Three hundred years later the same charge was made against the clergy. In the Articles sent to the Queen Regent of Scotland in 1558, and sent by her to 'the haill Prelatis and principallis of the clargie convenit in thair Provincial Counsall in Edinburgh,'—the last Provincial Synod of the Unreformed Church,—one of the subjects that are put forward as calling for redress is that 'the silver commonlie callit the Kirk richts and Pasche offrands, quhilk is takin at Pasch fra men and women for distribution of the sacrament of the blissit Body and Blud of Jesus Christ, were at the beginning but as offrands and gifts at the discretion and benevolence of the givar only, and now, be distance of tym, the kirkmen usis to compell men to the paying tharof, . . . sua that thai . . . stop and debar men and women to cum to the reddy using of the sacraments of Haly Kirk, quhile [till] thai be satisfiet tharof with all rigor.'[1]

It was no doubt because of the popular feeling on this subject that the provincial council, which at last, but too late, sought to reform many abuses, enacted that to silence the murmuring of the people, and 'to avoid even the appearance of evil,' the vicars of churches should henceforward reckon with their parishioners for the offerings (*oblationes*) due to the Church (as well as for the small tithes and personal tithes) not at Easter, but in the month of January, a little before Lent.[2] But there is to be found no admission that the oblations were not of obligation, though it is asserted (as indeed it was in theory all through the middle ages) that the sacraments should be ministered to the faithful without cost (*gratis*).

It is only fair to say that the wiser and more high-minded of the guides and rulers of the medieval Church were alive to the evil here indicated. The parish priests

41-43. A penny a day was at this period (1299-1300) put to the account of the daily oblations of the Prince (afterwards Edward II.), and three pence a day for the Queen's daily oblations. *Ibid.* 45.

[1] *S.E.S.* ii. 148. [2] *Ibid.* p. 174.

too often yielded to the temptation of enforcing the payment of the customary oblations at Easter, when everyone of the adult parishioners was bound to receive the communion. But this was not with the consent of the authorities of the Church. Indeed, it was probably as directed against the evil under our notice that in one body of Scottish statutes (thirteenth century) we find the provision, 'the laity are not to offer and to communicate at the same time on Easter day.'[1] It may be added that we have in the rule of the great church of Salisbury (which was taken generally throughout Scotland as a model) the injunction, based on a quotation from Gregory the Great, that the clergy were not to receive the oblations of the lay people on Easter day, even *after* the mass at which they had communicated, 'because this is a manifest indication of avarice, and clearly detrimental to the devotion of the communicants.'[2]

Though there might be many priests serving in a church, the oblations, by whomsoever they might be received, always went to the priest who had the formal charge, or cure of souls. Lyndwood says that oblations made on the Lord's days, on festivals, or on other occasions, do not pertain to other priests celebrating in the same church, but only to the curate, that is, the rector or vicar. And the reason, he says, is, that the people who offer are not parishioners of any but the curate. Yet, he adds, custom in some places makes an exception to this rule; and whenever the bishop celebrates in any church of his diocese, he, and not the curate, is to have the oblations, 'for the parish is his.' Lyndwood adds the warning, that the bishop should not celebrate too frequently in any one church of the diocese, so that the curate might not suffer too much in pocket.[3]

In the case of wide-spread parishes, where a chapel of ease was necessary for the worship of the more remote

[1] *S.E.S.* ii. 52.

[2] See Frere's *Sarum Customs*, p. 162. 'De communione et oblacione laicorum in die Pasche.'

[3] *Provinc.* lib. II. tit. v. vers. *Oblationes.* This conception of the priest in cure of souls, whether rector or vicar, being the deputy and delegate of the bishop, was never lost sight of.

parishioners, care was taken that the oblations should go to the mother-church. And, as a rule, the bishop never sanctioned the erection of a private chapel in the house of a nobleman or great landowner without securing that the oblations made in the chapel should be handed over to the parish clergyman.

It is perhaps well to point out that the law of the Church strictly forbade the bishop taking any money or recompense, beyond a 'procuration,' that is, his hospitable entertainment, for the consecration of a church.[1]

No church or chapel might be built without the consent of the bishop. Much stress was laid on this ordinance, lest by the erection of chapels, whether for public use or the convenience of private persons of rank, the parish church might suffer.[2]

Several instances occur of the sanction of the bishop being sought for the erection of private chapels; and we constantly find the bishop taking security that the parish, or mother-church (*ecclesia matrix*) should not incur loss, and accordingly that the oblations made at the chapel should be handed over to the parish church. In several cases the chaplain, before he was allowed to officiate in the chapel, was required to take an oath of fealty to the parish church. Thus, in 1243, Alexander de Strivelin obtained license from Bishop David de Bernham to have a chantry chapel at Laurenciston in the parish of Egglesgrig (now St. Cyrus, in Kincardineshire), but on the condition that all oblations and obventions of the chapel should go to the parish church, that the chaplain should swear fealty to the parish church,[3] and that Stirling and his heirs should annually pay, 'in recognition of subjection,' a pound of wax.

Similar arrangements were made in the cases of the chapel at Okeltre, near Linlithgow, of a chapel at Drem in

[1] *Decretal. Greg. IX.* lib. v. tit. iii. c. 10.

[2] *S.E.S.* ii. 11.

[3] The meaning of the oath is more clearly expressed in the oath which the chaplain of W. de Golin, serving 'the oratory and chantry,' at his vill of Stevenston in the parish of Haddington, was required to take, namely, 'that the Church of Haddington should incur no loss by reason of the oratory of Stevenston.' *Reg. Pr. S. And.* p. 324.

the parish of Haddington, and of a chapel at Clatyn in the parish of Losresch (Lathrisk, in Fife).[1]

In a composition of the year 1320, between the abbat and convent of Newbotle on the one part, and the vicar of Tranent on the other, it was agreed, *inter alia*, that the vicar should have the *ceragia*, oblations, and mortuaries.[2] Whether the *ceragia* at this date were voluntary gifts of wax, *ad luminare*, from the parishioners, or something of the nature of a due like the old Saxon *Waxshot*, I hesitate to say. The word is rare in Scottish record.[3] Conceivably, it means here wax paid, as above, by the owners of private chapels.

The Corpse-Present or Mortuary.

An occasional, and, in some parishes, a considerable source of addition to the income of the parish priest was the impost known as the 'mortuary,' or 'corpse-present.' It was a custom which by long continuance came to be regarded as a legal obligation, that on the death of a parishioner a gift should be made to the parish church. Synodal constitutions both in England and Scotland enforced the obligation; and in England there were diocesan and provincial statutes which laid down rules (varying somewhat in different dioceses) as to the mode and measure of its fulfilment.

Among the statutes of the thirteenth century promulgated by Scottish synods we are unfortunate in finding only two notices, and those in the corrupt text of the Lambeth manuscript. One of these simply lays down that 'the most valuable animal of the deceased shall be paid to the mother-church for a mortuary.'[4] The other, which the corruption of the text makes difficult of interpretation, seems to enjoin the payment of a cow in

[1] *Reg. Pr. S. And.* pp. 280, 321, 322, 328. To these examples may be added the private chapels in parishes belonging to Lindores. See *Chartulary of Lindores Abbey*, pp. lxviii–lxxiii.

[2] *Regist. de Neubotle*, No. 147.

[3] See Spelman's *Glossarium*, s.v. *ceragium*.

[4] *S.E.S.* ii. 47.

ordinary cases; and when the deceased had 'nothing,' and this statement was proved on the oath of two of the neighbours, 'the largest and best cloth' (*major pannus et melior*) was to be given.[1] The contemporary ordinances of the English dioceses generally direct that 'the *second-best* animal'—horse, ox, or cow—should be paid to the Church when the deceased had three or more animals, the best being paid 'to him to whom it is due of right,' that is, as the recognised tribute of the vassal to his lord, or feudal superior. In the constitutions (1256) of Bishop Giles de Bridport, the practice of the diocese of Salisbury is stated and enforced. On the decease of any land-holder the parson or vicar was to receive *melius averium post dominum*.[2] As it seems to me, where the exaction of the best beast was not insisted on by the superior, the best beast might be claimed by the Church. The payment of this due (known in Scotland as the 'herezeld') to the superior was a custom well established in Scotland, and one cannot but feel some surprise that no notice of it is taken in the statutes of the Scottish Church to which I have referred.[3] I think it is just possible that at the time when the Scottish statutes, which we are considering, were enacted, the Church may have laid claim to the best beast. At any rate, one may call attention to two sets of statutes of the diocese of Sodor (both of the thirteenth century), in the earlier of which (1239) it is distinctly laid down that 'in mortuaries the best animal (*principale animal*) shall be paid to the Church, be it cow, ox, or horse, if its value reaches six shillings, at the least.'[4] But in the later (1291) statutes of the same diocese it is enjoined that 'of the goods of every deceased person the Church shall have the choice of all, *except one*, according to the custom of the neighbouring provinces.'[5]

[1] *S.E.S.* ii. 44.

[2] *W.C.* i. 713.

[3] On the *herezeld* see Balfour's *Practicks* (edit. 1754), p. 199, and Craig's *Jus Feudale*, lib. ii. dieg. viii. § 32. The word *heriot* is the corresponding term in England.

[4] *W.C.* i. 664. The text, as printed by Wilkins, reads 'si fuerit ad valorem vi. sol. aut minus.' It is obvious that 'aut' should be read 'ad.'

[5] *W.C.* ii. 176.

One of the thirteenth century statutes of the Scottish Church enjoins, in the case of the death of one who resides in two different parishes, that the church of each parish had a right to a corpse-present (*corporale exennium*) and 'umaist claith.'[1]

The impost of the mortuary was particularly odious to the people; and, as is well known, in the early part of the sixteenth century it formed one of the most frequent grounds of complaint against the Church. Though the passage about to be cited from Sir David Lindesay's *Satyre of the thrie Estaitis* will be familiar to some, its importance, in showing how severely this claim, together with the demand of the herezeld, bore on the poor, will justify its quotation. The drama was acted before the King and Queen at Linlithgow on Twelfth Day, 1540.

Pauper, one of the *dramatis personae*, speaks.

'Gude-man, will ye gif me your charitie,
And I sall declair yow the black veritie.
My father was ane auld man, and ane hoir,
And was of age fourscoir of yeirs and moir;
And Mald, my mother, was fourscoir and fyfteine;
And with my labour I did thame baith susteine.
We had ane Meir, that caryit salt and coill;
And everie ilk yeir scho brocht us hame ane foill.
Wee had thrie ky, that was baith fat and fair,
Nane tydier into the toun of Air.
My father was sa waik of blude and bane,
That he deit; quhairfore my mother maid great maine.
Then scho deit, within ane day or two;
And thair began my povertie and wo.
Our gude gray Meir was baittand on the feild;
And our landslaird tuik hir for his hyreild.
The Vikar tuik the best cow be the heid,
Incontinent, quhen my father was deid;
And, quhen the Vikar hard tel how that my mother
Was dead, fra-hand he tuke to him ane uther.
Then Meg, my wife, did murne, both evin and morow,
Till, at the last, scho deit for verie sorow.
And when the Vikar hard tel my wyfe was dead,
The thrid Cow he cleikit be the head.
Thair umest clayis, that was of rapploch gray,
The Vikar gart his Clark bear them away.

[1] *S.E.S.* ii. 44.

Quhen all was gaine, I micht mak na debeat,
But with my bairns past for till beg my meat.
Now have I tald you the blak veritie,
How I am brocht into this miserie.'[1]

This is a singularly graphic and affecting picture, and if it represents the practice of the day without exaggeration, it exposes such a measure of heartless cupidity on the part of the clergy, that one cannot wonder if the settled hostility of the people was inflamed. However it may have been at the time in Scotland, it is certain that exactions carried to this extent would have been directly contrary to the provisions of some of the provincial and diocesan constitutions of the Church of England in the thirteenth century. Thus, in the provincial constitutions (1209) of Archbishop Langton it is expressly enjoined that when the deceased left only two animals, neither of them was to be taken as a mortuary. This exemption, indeed, was not to be regarded as of right, but only as 'of the pity of the Church.' Other illustrations of the more benign and reasonable temper of the thirteenth century ecclesiastical legislation on this subject may be seen on a reference to the pages of Wilkins' *Concilia*.[2]

One thing is certain, that we must not infer from the description of the state of things pictured so vividly by Lyndesay that the earlier practice of the Church was marked by so ruthless a spirit. For it is clear that in England the comparatively moderate temper of the thirteenth century statutes had, by the sixteenth, yielded to a rigorous and uncompromising spirit of exaction. This is made plain by ample evidence, from which it will suffice to cite the following passage from the grievances of the House of Commons against the clergy in 1530. The Commons complained of 'the great polling and extreme exaction which the spiritual men used in taking corpse-presents or mortuaries. For the children of the dead shall all die of hunger and go a-begging rather than they would of charity give to them the silly cow which the dead man ought [owed] if he had but only one: such was the charity of them.'[3]

[1] Lyndesay's *Works* (Early English Text Society), p. 450.

[2] See vol. i. p. 530.

[3] *W.C.* iii. 739.

It is difficult to conceive any impost better fitted to provoke the hatred of the poor. The origin of the custom is obscure; but it was the fashion to explain it as the payment in lieu of the tithes and oblations which 'through ignorance or carelessness' the deceased had failed to pay during his lifetime. In England the complaint of the Commons, noticed above, was followed in the same year by legislation—21 Henry VIII. c. 6—restraining the worst of the exactions under the name of mortuaries.

In 1535-36 James V. urged the clergy to abandon insisting on the corpse-present and upmost cloth.[1] And in 1558-59 the Queen Regent sent to the provincial synod certain articles drawn up by 'sum temporall Lordis and Barronis' in which, *inter alia*, is urged the abolition of 'the corpse-presentes, kow, and vmest claith.'

In Scotland the discontent and indignation to which Lyndesay's effective satire gave expression, eventually awakened the prelates to a sense of their danger; and in the well-intentioned but belated and futile provincial synod of 1558-1559, an attempt was made to restrain the evils complained of. But the effort to reform came too late.[2] The chief feature of the new statute was the exemption of the very poor from the burden.[3]

[1] *State Papers, Henry VIII.* iv. 667.

[2] The statute will be found in *S.E.S.* ii. 167-8.

[3] This opportunity may be taken for suggesting that the true reading at p. 168, line 2, is 'pro animali seu mortuario'—not 'pro annali,' etc.

CHAPTER XII

RELATIONS OF CHURCH AND STATE

In the Church of England it came to be the generally recognised practice that homage was made to the king by the bishop after his election and before his consecration, while after his consecration the oath of fealty (*juramentum fidelitatis*) was taken. There is, so far as I am aware, no reason to doubt that the same practice prevailed in Scotland. As it is put in *Regiam Majestatem*, 'Bishops when consecrated are not bound to do homage for their baronies held in frankalmoigne (*de baroniis suis eleemosynatis*), but fealty only. But bishops-elect, before their consecration, have been accustomed to do homage.'[1] At the bottom of the objection to a consecrated bishop doing homage was the ecclesiastical sentiment that there was something unbecoming in the acknowledgment by bishops that they were 'the men' (*homines*) of secular princes, and in the ceremonial which required the bishop to place his sacred hands between the hands of a monarch, which perchance had been defiled by blood.[2] It was further contended that his holding was of lands which being granted as alms (*in puram et liberam eleemosynam*) carried no obligation to feudal service. The sentiment was respected; but the Crown lawyers, by requiring homage before consecration, went far to secure the substance and reality of what was desired. And there were certainly some occasions on

[1] Lib. ii. cap. 64, §§ 2, 3.

[2] Craig (*Jus Feudale*, Lib. i. Deig. 11, cap. 10) cites these objections as put by Pope Adrian IV. in his contest with the Emperor Frederick.

which bishops after consecration were required to do homage as well as to swear fealty. A notable example of this is presented in the case of the prelates of Scotland, as well as the earls and barons, rendering homage and swearing fealty to Robert II. on the occasion of his coronation (1371).[1]

The acknowledgment by the bishops of the king as their feudal superior, from whom they held the temporalities of their sees, gave rise to claims, frequently put forward by the Crown, to the right of disposing (of course without permanent alienation) of the temporalities of the sees during a vacancy. The king claimed to deal with the temporalities of a vacant bishopric much as he would deal with the estate of a lay vassal during the minority of the heir. And examples are frequent where, as a matter of fact, the king makes grants to favourites of the temporalities of a see during the vacancy.

In this connexion we have to notice the claim of the king to appoint to the benefices in any diocese during the vacancy of the see (*sede vacante*) if those benefices had been in the gift, or, to use the technical term, in the *collation* of the bishop. In making this claim the king came into collision with the pope. In 1322 Pope John XXII., who was ever eager to extend the control and influence of the Roman see, on translating John, Bishop of Glasgow, to the bishopric of Connor, in Ireland, claimed to reserve to himself the 'provision' of all benefices vacant through this translation, that is, all benefices in the bishop's gift which could not be filled during the vacancy of the see.

To the see of Glasgow the pope appointed John de Lindsay, and to the canonry at Glasgow, which had been held by Lindsay, and was vacated by his promotion, the pope nominated, as it would seem, an Italian, Nicholas de Guercino. But the king, Robert I., acting on the old custom, which acknowledged the right of the king to appoint to benefices in the bishop's gift while the see was vacant and until the bishop-elect had made homage, nominated a clerk of his own, Walter de Twynam, and called on the bishop after his return from Rome to give

[1] The instrument notarial is printed in the *Acts of Parliament*, i. 546.

institution to his nominee. The king claimed that he was acting in accordance with a 'custom in the kingdom of Scotland acknowledged beyond the memory of man that the king was entitled to present to all benefices, however they had become vacant, which pertained of full right to the collation of the bishop until he had rendered faith and fealty to the king.' There was in this case a good deal of friction, and the bishop was placed in an awkward position. But the Bruce was not a man to be trifled with. And the bishop, after protesting that his act was not to create any prejudice to the pope's claim, gave admission and investiture to the royal presentee.[1]

In the middle of the next century the matter of the king's rights again came into prominence. And now it was thought desirable to have the testimony of the clergy of Scotland to the antiquity of the general acknowledgment of the claim of the Crown. A provincial council, held at Perth in 1457, declared, on the sworn evidence of clergy there present, that the king, of ancient and time-honoured custom, possessed the right of presenting to all benefices throughout the kingdom of Scotland, however vacant, which would have been in ecclesiastical patronage had the see been occupied, and, it is added with significance, even though these had been generally or specially 'reserved.'[2]

After this, repeated Acts of the Parliament of Scotland not only firmly asserted the king's rights, as laid down by the provincial synod, but enacted formidable penalties against any who in derogation of the right of the Crown would cause themselves to be 'provided' by the apostolic see to any such benefices. The offender was forthwith to be deprived of any benefice which he possessed at the date of his 'provision' to the new benefice, and was to be incapable of holding another unless he first demitted that which he had obtained in contempt of the king's right;

[1] See Theiner, No. ccccxlviii. and *R.G.* i. 252.

[2] *S.E.S.* ii. 79. A secular statute of 1462 recites (with some modification) the finding of the provincial council, adding boldly after the word 'reservata' the words 'ubilibet in Romana curia.' See *S.E.S.* ii. 282. The provincial council, indeed, extended the king's right to presenting 'ad electiva secularia etiam si majora post pontificales.' This latter provision would include deaneries of cathedrals.

and further, if the 'quality of the fault' required it, he was to receive condign punishment at the discretion of the judge. The clergy of Scotland, though they could hardly be so outspoken, were evidently in this matter at one with the king and the rest of the Scottish laity. The king might, naturally enough, take advantage of the privilege to advance his own favourites, but at least these would be Scots, and not Italians or other foreigners.[1]

It is plain that in the second half of the fifteenth century, quite apart from the infringement of the ancient rights of the Crown, the system of papal provisions, and their purchase, was exciting a strong feeling of repugnance. Scotland, which had long been a most submissive child of the apostolic see, and far more subservient than England, was beginning to rebel. Before there was the slightest breath of suspicion in respect to doctrinal differences, Scotsmen were stirred by the venality and corruption of the Roman Court. In the Parliament of James III. (1481) we find it enacted, 'Gif ony person or persons in time to cum raisis, or purchasis ony commission of the Sege of Rome, to be provided of ony benefice that be fundin vacand, the sege of the Bishoppe vacand for the time, the persones that raisis, purchasis, or usis ony sik commissiones sall be repute and halden as breakers and violatoures of our Soveraine Lordis priviledges, and transgressoures against the Act of Parliament, and incur the paine conteined in the samin.'[2] This enactment was further strengthened in 1488.[3]

The Freedom of Holy Church.

Again and again Scottish kings, in Parliament or by solemn declarations, pledged themselves to maintain 'the freedome of haly kirke.' When we examine what was intended, the language resolves itself into a promise to secure the church from lay interference with ecclesiastical property, and temporal privileges. It was a valuable and

[1] Acts of Parliament bearing on this subject were passed in 1481, 1483, 1485, 1487, 1488, 1493, 1496, 1525, 1526, and 1540. See *Act. Parl. Scot.* vol. ii.

[2] *A.P.* ii. 141.

[3] *A.P.* ii. 209-210.

much needed help against the oppression of the great nobles. The first act of the first Parliament of James I. (1424) declares that the Church should enjoy its old privileges and freedoms; and then, descending to particulars, it enacts that no man should prevent churchmen setting their lands and teinds.[1] In the following year Parliament in its first act in behalf of 'the freedome of haly-kirke' enacts the restoration of wrongly alienated church-lands.[2] And similar legislation makes its appearance from time to time. But more important than these rather vague declarations was the support given by the State in 1443 to ecclesiastical censures. It was enacted in Parliament that no person who has broken the Church's freedom by notorious spoliation of Church property, or has been excommunicated, be received in the king's presence, or in Parliament, or 'answered in the law of judgment of fee or heritage or other cause,' but should be ever eschewed as cursed. The State resolved that excommunication should be no *brutum fulmen*. And further, it was enacted that acts of general or provincial councils, if published and proclaimed by the king's authority, should have the force of law.[3]

The Claim of the Crown to the Movable Estate (bona mobilia) *of Deceased Bishops.*

This may be a suitable opportunity for calling attention to a claim made by the kings of Scotland to take possession of the movable estate of deceased bishops. It is not easy to see the theoretical basis on which the custom was founded. Conceivably it was connected with the doctrine that the Crown originally possessed the right to the guardianship of the temporalities of the see during the vacancy, and that this right was abused.[4]

[1] *Act. Parl.* ii. 3. [2] *Ibid.* 7.

[3] *Ibid.* 33. The reference in the act to compelling obedience to Pope Eugenius IV. and against the favourers of 'scissione' (schism) points to there still being some adherents in Scotland of the Anti-Pope Felix V.

[4] In the charter of David II. referred to below, only *ancient custom* is pleaded.

A Bull of Alexander VI. (1259) declared that there was neither custom nor right for the practice, and strictly forbade its continuance. Whatever might be thought as to *right* (*jus*), the pope was in error as to the matter of fact: custom (*consuetudo*) did exist. Subsequently, as was alleged, bulls were granted sanctioning the practice, if it was founded on established custom.[1] In 1292 Edward I. of England, claiming to be overlord of the kingdom of Scotland (*superior dominus regni Scotiae*), granted, as a special favour in recognition of good and laudable service done on Edward's behalf by the Bishop of Glasgow, the 'concession' to him that he might grant his movable goods by testamentary disposition as he pleased. But it was expressly added that this favour was not to be taken as a precedent to the prejudice of Edward or any future king. In another case, also a special favour, Edward granted that all the goods and chattels belonging to the Bishop of Caithness at the time of his death, 'which according to the custom of Scotland are taken into our hand,' should be given to the Prior of Coldingham and to the parson of Lestalrik (Restalrig), brother of the bishop aforesaid, to be distributed by their hands for the soul of the deceased.[2] It appears from a papal letter (1291) that there had been a custom for the earls of Strathern to take possession of the movable estate of deceased bishops of Dunblane. The pope (Nicholas IV.) protests against this evil practice. The earls of Strathern had long been regarded as the special protectors of Dunblane.[3] And it is interesting to find that on the election of Alpin to the bishopric of Dunblane, the pope, when confirming the election, addressed concurrent letters to the chapter and to the Earl of Strathern, '*patronus* of the church of Dunblane.'[4] And other examples of this practice can be found.[5]

In an undated charter of David II. preserved in the *Register of the Great Seal*,[6] and in the *Scotichronicon*,[7] the king

[1] *Act. Parl. Scot.* i. Appendix to Preface, p. 2.

[2] *Rot. Scot.* i. pp. 6, 7, 10.

[3] Theiner, No. cccxliii.

[4] Theiner, No. ccclv.

[5] See *Chartulary of Lindores*, p. xxxviii.

[6] i. p. 77.

[7] Lib. xiv. cap. 42.

sets forth that the custom had come down from ancient times to his own day, by which all the movable goods of deceased bishops were applied to the king's use (*Regiis usibus*), so that therefore the power of making a will had been wanting to bishops. He declares that he is now aware that this custom was manifestly derogatory to the clergy. Accordingly, with the consent and assent of his nephew, Robert, Steward of Scotland, and his children, and of the three estates of the kingdom in full Parliament assembled at Perth, he concedes and confirms that for the future Scottish bishops shall have liberty to dispose of their movable goods by testament, and that if they die intestate, their nearest friends may dispose of such goods for the weal of the soul of the deceased in such manner as may seem to them best. In return for this favour, each bishop shall appoint in his cathedral a perpetual chaplain to say one mass [—daily—?] for ever 'for us in our lifetime, and after our death for our soul,' for the soul of the king's father, and for the weal of his heirs and successors while alive, and for their souls after their decease. This mass was to be specially celebrated, and was to be in addition to the masses and other prayers to which on behalf of the king, his ancestors and successors, they were already bound.[1] At the request of the Scottish bishops, Gregory XI. confirmed this concession of the king in 1372.

Notwithstanding the renunciation of the custom by King David, with the assent of the heir of the throne, that heir, Robert II., after his accession, did not intervene to prevent the recurrence of the old abuse. In 1375, only three years after his previous Bull, Gregory issues another Bull, in which he declares that certain officials of the king, despite the renunciation of David and of Robert himself, had taken and appropriated to the royal treasury or other uses the movable goods 'of certain bishops and prelates.' This 'detestable custom, or more truly corruption,' he stringently forbids, and declares that those, although (as it is significantly added) 'of regal dignity,' who shall hereafter violate his ordinance, thereby incur sentence of excommunication, from which they cannot be absolved

[1] *Reg. Mag. Sig.* i. p. 77.

except at the hour of death, unless full restitution had been made.[1]

As late as 1445 John de Crannoch, Bishop of Brechin, then conservator of the privileges of the Scottish Church, caused a copy of the second Bull of Gregory XI. to be affixed to the doors of the parish church of St. Giles, Edinburgh; and this appears to have been done on the advice of the prelates, nobles, and commissaries of burghs present at the time in Edinburgh, probably as a preliminary to the royal pronouncement on the subject which was finally approved by the three estates in 1449. This declaration, which the king alleges to have been made after the deliberations, and on the resolution of the three estates of the realm, is so important in setting forth what the king conceded and what he claimed, that it is desirable that its provisions should be set forth with some fulness. The bishops, present and future, were to have full and free power to make their testaments, and to dispose of all and singular their plate (*clinodia*), jewels, goblets, cups, spoons, and vessels, whether of gold, silver, or gilt. They were also empowered to dispose of their corn and other harvested crops, and of their horses, cattle, sheep, and other animals, and of all other movable property whatsoever. In addition to this the very important concession was made that during the vacancy of the see the vicar general should collect all the revenues of mensal churches and all emoluments whatsoever pertaining to 'the spirituality,' including procurations, and should be accountable for them to the immediate successor of the deceased bishop.

The king, however, reserved to himself the rents of church lands, whether paid in victual or money, all the 'issues of courts and emoluments of temporal jurisdiction' in the same church lands. And this was claimed in consideration of the custody of the lands during the vacancy and the exercising of jurisdiction in the same. The king also reserved to himself the right of present-

[1] Theiner, No. DCCX. and *Scotichron.* lib. xiv. cap. 41. The expression 'episcopi et prelati' suggests that perhaps some attempt had been made to seize the goods of the lesser ecclesiastical dignitaries, to whom the name 'prelate' was applied.

ing to all churches and ecclesiastical benefices which by full right pertained to the collation of the bishop. The king is careful to explain that his custody of the church lands did not give him power to remove the tenant-occupiers.[1]

Before leaving this subject it is worth while to call attention to the current report recorded in the *Chronicle of Lanercost* (p. 97) that Richard of Inverkeithing, Bishop of Dunkeld, in the middle of the thirteenth century had been poisoned, with plain hint that this was done so that the king, Alexander III., might possess himself of the bishop's movable estate. And the chronicler goes on to say that Richard and his contemporary, 'Robert de la Provendir' (*de Prebenda*), Bishop of Dunblane, outwitted the king by giving away their movable goods before their deaths.

The Spiritual Estate in Parliament.

In the earliest notices of anything that can reasonably claim to be regarded as the great council of the nation, and from that time onwards, we all but invariably find the presence of some of the leading ecclesiastics. This was only natural. Many of the bishops and heads of the great religious houses were among the ablest and best informed men in the kingdom. They often possessed a knowledge of affairs, and a breadth of view, gained from acquaintance with the world outside the narrow bounds of Scotland, which could rarely be looked for among the great nobles. Again, after the establishment of the feudal system, the position they occupied, not only as great

[1] Occasionally in medieval documents there is a vagueness in the distinction between the property of the Church that was counted as belonging to 'the temporality' and that which was counted as belonging to 'the spirituality.' But generally, as here, tithes and offerings were of 'the spirituality' and rents of church lands were of 'the temporality.' From this charter it is also apparent that procurations, which were originally supplies of food and entertainment for the bishop and his retinue when actually travelling on his visitation tours, had not only been commuted into a money payment, but were apparently held to be exigible even when the bishop did not visit. The royal charter summarised above is printed in *R.G.* ii. 370 and *R.B.* i. 177.

feudal vassals, sometimes holding large tracts of land, and thus entitled to a seat in the royal council with the other barons, but their place as spiritual rulers, gave them a power and influence with the people equal to if not surpassing that possessed by the greatest of the nobles. Hence both in regard to legislation and to the judicial functions of the National Council, the bishops, abbats, and priors, summoned to attend the council, and (as it came at a later time to be designated) the Parliament, constituted an element of the highest value and importance.

It has been observed by one who was entitled to speak with the voice of authority, Dr. Stubbs, that 'the legislative functions of the national council are [in England] under the Norman kings rather nominal than real; but the form of participation [of bishops, abbats and barons] is retained.'[1] The remark is no less true when applied to Scotland under the early kings of the feudal period. The acts of the early Scottish kings are customarily set forth as enacted either 'with the counsel and assent' of the prelates and nobles present at the time, or what practically was equivalent, in their presence. But it was only slowly and by gradual steps that the concurrence of those summoned to the council came to be acknowledged as a necessity to valid and effective legislation.

The spirituality, the first of the three estates of the realm, seems to have been regarded at first and under ordinary circumstances, as represented by the prelates,—that is the bishops, or greater prelates, representing *ex officio* the great body of the secular or parochial clergy, and the abbats and priors, or lesser prelates, representing the monastic orders. It is an entire mistake frequently made to suppose that English bishops were summoned to Parliament as barons. In the vacancy of a see the guardian of the spiritualities was summoned in place of the bishop. What Stubbs has said of England is equally true of Scotland. 'The first or spiritual estate comprises the whole body of the clergy, whether endowed with land or tithe, whether dignified or undignified, whether sharing or not sharing the privileges of baronage.'[2]

We have, so far as I am aware, nothing suggestive of

[1] *Select Charters*, p. 17. [2] *Constit. Hist.* ii. 169.

the direct representation of the inferior clergy till we come to the time of David II. Attention, however, may be called to unusual features of the great assembly of the nation summoned by Robert I. to meet at Ayr in 1315. The question was the vital question of the succession; and both Bruce and the whole people of Scotland were profoundly interested in having a really national declaration, that could not be gainsaid. Accordingly there were on this occasion gathered together in the parish church of Ayr 'bishops, abbats, priors, deans, archdeacons, and other prelates[1] of the church, earls, barons, knights, and others of the community of the kingdom of Scotland, as well clerical as lay.'[2] The case was obviously of a highly exceptional character.

Whether this convention of the three estates should in strictness be styled a meeting of the Great Council, or Parliament, need not be discussed. Certainly under ordinary and normal conditions the great body of the clergy and religious had as yet no direct representation. Occasionally we find some indication of ecclesiastics of inferior rank being present at the meeting of the Council. But I see no reason to suppose that they were present as representatives, or as constituent members of the assembly.

In 1248 Alexander II. enacted an important law limiting the right of giving evidence on oath in certain cases. The king is said to have made this enactment in the presence of (*coram*) certain 'magnates,' among whom are the Bishop, the Dean, and the Archdeacon of Glasgow, who, let it be observed, are the only ecclesiastics present. In the absence of other evidence at this early date for anything like a customary, or a constitutional right for others than bishops, abbats, and priors forming part of the king's council, it would, I think, be extremely hazardous to draw any inference from this case.[3] In theory the

[1] The word *prelati* was occasionally applied to dignitaries of inferior rank. Thus Lyndwood (*Provinciale*, lib. i. tit. 7, cap. *Ignorantia*, vers. *Prælati Ecclesiae*), 'Hic vocantur Praelati nedum superiores, ut Episcopi; sed etiam inferiores, ut Archidiaconi, Presbyteri plebani, et Rectores ecclesiarum.'

[2] *Acts of Parl.* i. 464.

[3] *Act. Parl.* i. 404.

sovereign could, no doubt, summon whom he would; and occasions might arise when special reasons would make desirable the presence of certain of the lesser clergy. But it must be repeated that we lack evidence for the presence of any such under ordinary circumstances.

Till we come to the reign of David II. I am not aware of a trace of anything that could have at all resembled the 'praemunientes' clause in some of the writs of summons to Parliament addressed to English bishops on certain occasions.

The subject of the taxation of the Church property of Scotland for purposes of State is involved in much obscurity. There can be no question that occasional 'aids' were demanded, and granted, in cases of great emergency; but it is not so clear whether the assessment was always made by the clergy themselves, or by the king in Parliament. Bower informs us that in 1211 William held a 'Great Council' at Stirling, and demanded an aid to supply the money required to meet the obligations incurred by the treaty made with King John two years previously. The nobles promised 12,000 merks, and the burgesses 6000. The churches were not taxed. On them, says the chronicler, 'they did not presume to impose anything.'[1]

In the council held in Edinburgh in 1367 on the occasion of finding security for the payment of the ransom of King David II., the three estates each bound themselves, severally, to the fulfilment of the vast obligation that 100,000 merks would be paid to England. The clergy on this occasion were represented by the bishops, acting with the consent of the cathedral chapters. These were occasions that partook of the nature of a national crisis. But it is of importance to observe that in the first case the Great Council did not venture to impose a tax on the churches, and in the second the spiritual estate taxed itself.

Again, under Robert III., Parliament (1398) ordained that there be raised a general contribution of 2000 lib. 'for the common needs of the kingdom.' The 'clergy'

[1] Praeter ecclesias, super quas nihil imponere praesumpserunt. *Scotichronicon*, lib. viii. cap. 73.

'granted' their part with the following protestation: (1) 'that it run not to the clergy in prejudice in time to come, nor hurting the freedom of Holy Church'; (2) that their part be raised 'by ministers of Holy Church,' and that neither the king's officers, nor 'seculars intermit them in the raising of it.'[1] It must be acknowledged that this looks very much as though the act of the prelates in Parliament was taken as binding the clergy of the whole kingdom. Unfortunately we possess no list of those present in this Parliament which would enable to say whether any of the inferior clergy were present.

The closing years, however, of the reign of David II. present us with the presence of the inferior clergy in Parliament, though in what capacity it seems impossible to say with precision. And from that time forward they appear with frequency. It was a time of constitutional change. We find the general body of the prelates, barons, greater and lesser, freeholders, and commissioners of burghs, when assembled in Parliament, delegating 'the holding of the Parliament' to certain of their number. What we would in modern style call 'committees' are appointed to deal with different departments of the work of the Parliament, and on these committees we, as a rule, find certain of the inferior clergy.

Thus, in the Parliament held at Scone in September, 1367, the three estates, when assembled, elected committees for the purpose of holding the Parliament (*ad parliamentum tenendum*), and gave leave to all others to return home. In this case the cause assigned for leave being granted is that it was the time of harvest (*causa autumpni*). On the part of the clergy were elected the bishops of St. Andrews, Glasgow, Moray, Brechin (chancellor), and Dunblane; the prior of St. Andrews, the abbats of Dunfermline, Arbroath, and Lindores; and (this forming the matter of chief interest in the notice) 'of the clergy of St. Andrews, the provost of St. Andrews, and Master Alexander de Carioun; of the clergy of Glasgow, Sir (*dominus*) John de Carrick'; the proctor of the bishop of Dunkeld (being the precentor of Dunkeld),

[1] *A.P.S.* i. 574.

the proctor of the bishop of Aberdeen (Master David de Mar), and the proctor of the bishop of Ross (the Dean of Ross). It appears, then, that beside the prelates, greater and lesser, there were inferior clergy acting as proctors for absent bishops, and, further, that apparently the clergy of at least the dioceses of St. Andrews and Glasgow were in some sort represented.

In the succeeding Parliaments at Perth in 1368 and 1369, we find a similar course pursued. The record of the Parliament of 1368 bears that of those convened many compeared in person, some (who were excused for lawful causes) appeared by proctors, and a few were held to be absent contumaciously. The business was limited to five specified points, persons were elected 'to hold the Parliament,' and the rest were allowed to retire on account of the scarcity of provisions (*propter importunitatem et caristiam temporis*). We again find several of the inferior clergy appointed to act on the committees. Some of these were indeed proctors for absent bishops, but this cannot account for the presence of certain others. Thus, on the committee, or delegation, appointed to deal with legal cases on appeal (*ad deliberandum super judiciis contradictis*) we find on the part of the clergy beside three bishops and one abbat, Masters John de Peblys, John de Carrick, John de Caron, William de Dalgarnock, and the Archdeacon of Lothian. But special attention must be called to the records of the Parliament of 1369, held at Perth. It is declared that among those absent *per contumaciam* were 'a few of the inferior clergy and freeholders' (*pauci de inferioribus clericis, et liberetenentibus*). To be contumaciously absent seems inevitably to suggest a formal summons.

The question at once arises,—Were the inferior clergy summoned to Parliament, as the clergy of England were on certain occasions? In the reign of Edward I. we meet with the first appearance of what is known as the '*praemunientes* clause' in the writs of summons addressed to the archbishops and bishops. Each prelate is directed to *premonish* the prior (or dean) of his cathedral church, the archdeacons, and the whole clergy of the diocese, and to cause the prior (or dean) and the archdeacons to appear in Parliament in person, while the chapter of

the cathedral was to appear by one proctor, and the clergy of the diocese by two proctors.[1]

I have not been able to discover any trace of the *praemunientes* clause in the records of the Scottish Parliaments. It certainly is wanting in the form of summons (of a late date) addressed to archbishops, bishops, and abbats, which may be found in *The Acts of the Parliaments of Scotland* (vol. i. p. 104). And I regret that I must leave the subject in its obscurity. From the time of David II. we find that as a matter of fact there were clergy below the rank of bishops, abbats, and priors, in attendance on Parliament. But how they came to be there, and whether they were in any true sense representatives (in the sense of *elected* representatives) of their brethren, it seems impossible to say. Some were proctors of absent bishops, and some may have been officials, clerks, etc., of the Parliament; but others were present who do not appear to belong to either of these classes. More than this I am unable to say.

The number of the inferior clergy varied much, but was always small. The Parliament of 1467 may be taken as an example. There were present[2] seven bishops, eleven abbats and priors, and of the inferior clergy, James Lindsay, keeper of the privy seal, Archibald White, secretary, the Archdeacon of St. Andrews, the Dean of Moray, the Dean of Brechin, Richard Guthrie, John Athilmar, and Thomas Lutherdale. Some of the clergy ordinarily appear on each of the committees of Parliament, in the fifteenth century, even among 'the Lords of the Articles.' But in the sixteenth century they are mostly limited to those holding some official position, as *e.g.* secretary, clerk of the register, etc.

I am led to think that the high standing of some of the clergy, as learned and skilled lawyers, versed commonly in civil as well as canon law may point to the object for which their presence was sought. Among such as appear,

[1] See Stubbs, *Constit. Hist.* ii. 199, and Gneist, *Hist. of the Engl. Constit.* 396 *sq.* It is a curious survival of an obsolete form that even still the writs of summons addressed to the bishops of England contain the *praemunientes* clause.

[2] *A.P.S.* ii. 87.

the officials of the bishops, that is, the ecclesiastical judges in the consistorial courts, are familiar.

The attendance of the bishops, abbats, and priors in Parliament was not very regular nor very large. But in one Parliament or another the presence of the bishop of every diocese is on record, as is also the presence of the heads of at least the following religious houses: the priory of canons regular of St. Augustine at St. Andrews (the prior taking by special grace precedence of all abbats), Kelso, Dunfermline, Holyrood, Melrose, Cambuskenneth, Newbottle, Arbroath, Inchcolm, Holywood (*Sancti Nemoris*), Kilwinning, Paisley, Lindores, Balmerino, Jedburgh, Scone, Crossraguel, Culross, Dundrennan, Cupar, Inchaffray (*Insula Missarum*), Glenluce, Kinloss, Deer, Coldingham, Restinot, Isle of May, Ardchattan, Ferne, St. Mary's Isle, New Abbey, Pluscardin, Beauly (*de Bello Loco*), Pittenweem, Monymusk, Fyvie, Inchmahome, and Portmoak.

The presence of the spiritual estate as a constituent element in the Parliament of Scotland modifies the surprise one might be disposed to feel at the boldness with which the Parliament at times dealt with matters ecclesiastical. Even in matters relating to the conduct of worship we find examples of the interference of Parliament. In 1456 Scotland was suffering from the ravages of the plague, and in that year Parliament passed an act, that 'the prelates make general processions [that is, litanies sung in procession] throu out their dioceis twyse in ye wolk, for standing of the pestilence,' and further, that prelates 'grant perdon [*i.e.* grant an indulgence] to the priests that gangs in ye said processions.'[1] One of the most remarkable instances of interference of this kind was the ordinance of Parliament passed in 1427 for reducing 'the expenses and vexations of poor persons litigating in the spiritual court' and for abridging the inordinate length of the suits commenced in the said court. It is to be observed that the only cases with which Parliament attempted to interfere were those in which a layman in a civil cause cited a clerk to answer in the spiritual court. 'The law's delays' have always (though sometimes very

[1] *Acts of Parliament*, ii. 46.

unjustly) been a source of popular complaint. In the case of the spiritual courts of the medieval period there is only too much ground for believing that the complaints were well founded. The Scottish act of 1427 aimed at the final determination of a suit between the lay pursuer and the clerical defender in the space of forty days. Frivolous appeals were not to be allowed; and the judge who allowed frivolous appeals was liable to penalty if convicted before the Ordinary.[1]

But what was even more remarkable than the earlier provisions of the act was the added injunction that this act should be adopted by the provincial council of the Church, which was then in session. As Mr. Joseph Robertson remarks, the Parliament treated the ecclesiastical synod as if it were only 'to register the decree.'[2] Yet it must be observed that the reference of the matter to the provincial council or synod was a testimony on the part of parliament that the act, so far as it related to the clergy, was felt to need the more express indorsement of the spiritual authority. It does not come within our scope to relate the determined contest between the Pope and the King of Scots which originated with the passing of this act. An account will be found in the pages of the Preface to the *Statuta Ecclesiae Scoticanae*.[3]

It was ordinarily only within the borderland between lay and clerical rights and interests that Parliament attempted to legislate in matters ecclesiastical. Among such instances of civil interference will be found the attempts of the State to restrain to some extent the immunities claimed by the Church for criminous clerks, and to limit the privileges (often injuriously abused) of persons flying to the Church for protection from the consequences of crime. These and the legislation of the later period in opposition to the system of papal provisions are the most noticeable results of the action of Parliament in relation to the Church in Scotland.[4]

[1] *Act. Parl. Scot.* ii. p. 14. [2] *S.E.S.* i. lxxxi.

[3] i. pp. lxxxii-lxxxviii.

[4] Towards the middle of the sixteenth century Parliament passed certain enactments 'to the confusion of all heresy,' and gave the support of civil authority to the maintaining of the old faith. By the

The Conflict of Civil and Ecclesiastical Jurisdictions.

The medieval Church was vigorously opposed to the appearance of the clergy as suitors in secular courts. It could, of course, legislate with respect to the clergy when the other party in litigation also belonged to the clergy. And in this respect its action was stringent. Thus among the Scottish ecclesiastical statutes of the thirteenth century we find one entitled, 'that a clerk may not be brought before a secular court,' the text of which runs as follows: 'We also ordain that if any ecclesiastical person raises a question, either real or personal, against another ecclesiastical person in regard to real or other Church property, he shall pursue the process before an ecclesiastical judge, and in no wise draw his adversary to a forbidden court. But if anyone shall presume to do otherwise, and does not desist after he has been canonically admonished, the pursuer (*actor*) shall lose any right that may have belonged to him; and the defender (*reus*), if he consents [to the disposal of the case in a secular court], shall stand as convicted. And if they, nevertheless, persist in this course, and despise the penalties aforesaid, let them be denounced publicly as excommunicate according to the sacred canons, and by the authority of the council.'[1]

In 1392 and 1393 there had been a sharp contest between the Abbat of Cambuskenneth and Robert Sinclair, Bishop of Dunkeld. In the ecclesiastical courts the matter terminated in the excommunication of the bishop. But the parties met in the presence of King Robert III. in the vestry of the Dominican Church at Perth on 28th March, 1395. What happened then we do not know, but we find the king granting a certificate that the abbat had not summoned the bishop before the king, and that he (the king) was not sitting judicially.[2]

Parliament of 1540, death and the confiscation of goods movable and immovable was the punishment of anyone who impugned the Pope's authority. And acts were passed 'for the honour of the Holy Sacraments' and 'worship to be had to the Virgin Mary,' and against private conventions held to dispute on the Holy Scriptures. And in earlier times acts (less specific in detail) were often passed against 'heretiks.'

[1] *S.E.S.* ii. 20.

[2] *Chartulary of Cambuskenneth*, 318.

The Church was not less opposed to the clergy being brought before secular courts by the laity. The struggle on this subject, which in England was long protracted and was attended by varying fortunes, forms an interesting and important chapter in the history of the constitutional law of that country. As in other matters of dispute between the Church and State in Scotland the contest here was on a smaller scale, and the State showed itself less disposed to assert itself. What was known as 'benefit of clergy' (*privilegium clericale*) was generally allowed. In most cases any clerk (and the term was extended eventually not only to those who had received the tonsure but to those who could read) might claim to be remitted to the court of his ecclesiastical superior. The system of replegiation in the secular courts made such claims appear in no way extravagant. The ecclesiastical judge was bound to do justice in the case, and the accused, if convicted, received sentence from the spiritual judge. If the offence was such as would have involved the penalty of death in the secular court, the ecclesiastical judge sentenced the offender to imprisonment for life in the bishop's prison.

The exemption of ecclesiastical persons from the jurisdiction of the secular courts was no new claim of the Church. It had long been recognised in the great codes of civil law. It has its place in the laws of Justinian; it was enforced by the capitularies of Charlemagne; it was acknowledged in the legislation of the Anglo-Saxon kings of England. We unfortunately do not possess material for a continuous history of the relations of the Church and the State in regard to this question as it practically evolved itself in Scotland. The ecclesiastical statutes of the thirteenth century are intended to deal with the excesses of ecclesiastical pretensions. Thus, it is forbidden to priests, vicars, and other clerks to demand from the lay officers of the State a clerk, or a crusader [*i.e.* one who had taken a vow to go on a crusade], who had been arrested for such crimes as homicide or robbery, unless with the consent, or at the order of the bishop, archdeacon, or dean [of Christianity] of the place where the demand for the delivery of the prisoner was made. In

such a case it was expected that the lay officer (*ballivus laicus*) should at once surrender his prisoner to the ecclesiastical authorities. And it was forbidden to the clergy to answer any demand of the officer for a lay borgh, or surety, as a condition for the delivery of his prisoner. The claim for the transfer could be made only by the bishop or his deputy; but when it was made, the officer was to hand over the detained clerk without further question.[1]

In the same body of statutes we find that the clerks of whatever order were to be defended by the Church until, in the case of ruthless crimes (*propter immanitatem criminum*) they had been first formally degraded from the orders they possessed in the Church, after which formal degradation they were to be handed over to the secular power. In the case of crimes of less enormity clerks after conviction were to be committed to 'the close custody of the prison of the diocesan, and there supported on the bread of affliction and the water of tribulation.'[2] This statute shows us that the bishop's prison was a Scottish as well as an English institution. In the provincial constitutions enacted at Lambeth in 1261, every bishop was enjoined to have in his diocese 'one or two prisons for the detention of flagitious clerks, caught in, or convicted of, crime.'[3]

In matters spiritual, laymen as well as clerics were liable to be cited, and dealt with, by the ecclesiastical courts. But difficulties arose when questions as to real property came to be debated. In 1208, Patrick, Earl of Dunbar, had a dispute with the monks of Melrose as to certain pasture lands, which, as the monks alleged, belonged to them, and which the earl had appropriated. He was cited before the ecclesiastical court, and on his refusing to appear, all his manors were placed under interdict. Subsequently he alleged various exceptions, and claimed as a layman the benefit of the common law of the kingdom. The ecclesiastical judges, however, declared that it was 'the general custom of those parts' that a layman might be cited by a clerk before the Church courts, especially when dealing with property which had been granted in

[1] *S.E.S.* ii. 18. [2] *Ibid.* [3] *W.C.* i. 755.

frankalmoigne. Eventually an amicable agreement was made between the parties in the presence of the king.[1]

Whatever be the origin and value of *Regiam Majestatem* as a witness to early Scottish practice, its recognition in later times makes it worthy of record that according to this manual of law certain matters were removed from debatable ground. All pleas relating to marriage dowries, to testaments, to the advowson of churches, and the right of patronage of churches, were expressly remitted to the jurisdiction of the Church.[2] But on this subject more will be said when dealing with the ecclesiastical courts. Although generally the question of advowson, or right of patronage, to a parish church was held to belong to the ecclesiastical courts, we find an early instance (it belongs to the reign of King William) in which the prior and canons of St. Andrews were drawn into the king's court. Saer de Quency (afterwards Earl of Winton) claimed the right of patronage to the churches of Leuchars and Loscresc, which had been granted to the prior and convent by Ness, grandfather of Saer : and he presented one Symon de Quency (presumably a relation of his own) to the benefice. The prior and convent referred the matter to the Pope (Innocent III.), who sent a mandate to the abbats of Arbroath, Cupar, and Lindores, to compel Saer to desist from his molestation of the true patrons. Saer refused to litigate except in the court of the king, and cited the prior before that tribunal. When the prior compeared, the king attempted to reduce the prior to compliance by threats (*minis et terroribus*) : and it seems that the three abbats were so alarmed that they declined to proceed farther in the matter. For this neglect they were sharply rebuked by the Pope and ordered to take action for bringing the dispute to a close. We need not pursue the matter farther. But it is interesting to notice that the Pope states that the citing of the prior before the court of the king was 'contra consuetudinem ecclesiae Scoticanae.' The Pope was quite determined in the matter, and no fewer than four bulls were issued to effect the ends of justice.[3] The incident, though interesting, is of no con-

[1] *A.P.* i. 391. [2] *A.P.* i. 598.

[3] See *Reg. Priorat. S. Andree*, 350-352.

stitutional importance. It merely illustrates the imperious temper of William the Lion at a time when relations with Rome were strained. This transaction is almost contemporary with the dispute between the monks of Melrose and the Earl of Dunbar referred to above.

One other case may be referred to as illustrating the uncertainty as to the respective limits of the jurisdiction of the temporal and ecclesiastical courts in the time of King William. There was a dispute between the monastery of Arbroath and the Keledei of Abernethy as to the teinds of certain lands. The question was litigated apparently for a long time in both the king's court and the bishop's. This is stated in the definitive sentence of the bishop (Abraham, of Dunblane), before whom the cause was tried, and it is added that sentence was given in the presence of many nobles who were sent by the king 'ad finem ejusdem litis audiendum.'[1]

We find Pope Gregory X. in 1273 writing a sharp and peremptory letter to Alexander III. complaining that he compelled causes relating to the advowson of churches to be litigated in the secular courts.[2]

[1] *Regist. Vet. de Aberbrothoc*, 148. [2] *Lib. de Scon.* No. 120.

CHAPTER XIII

DIOCESAN ORGANISATION

ARCHDEACONS AND DEANS OF CHRISTIANITY

For the supervision of the parochial clergy and the parish churches the bishop relied to a large extent on the archdeacon and his subordinates, the 'deans of Christianity.' To these officers also was committed the execution of the bishop's mandates.

The bishops of the smaller dioceses had each one archdeacon; the bishops of the extensive dioceses of St. Andrews, and (after 1238) of Glasgow, had each two. The archdeacons of the former of these sees took their titles from St. Andrews and Lothian, the river and estuary of the Forth dividing the two jurisdictions. The archdeacons of the southern diocese were known as the archdeacon of Glasgow and the archdeacon of Teviotdale.

For certain purposes parishes were in most of the dioceses grouped together in smaller sections, generally known in Scotland as 'deaneries of Christianity,' each presided over by one of the parochial clergy, known as the 'dean of Christianity,' or towards the end of our period, as the 'rural dean.'[1]

The condition of the fabric and furniture of the parish churches came more especially under the supervision of

[1] The term 'rural dean' is comparatively infrequent in Scottish record, and is found chiefly at a late period, as, for example, in Myln's *Vitae Episc. Dunkelden.*, and in the provincial statutes of 1558-59. See *Stat. Eccl. Scot.* ii. 161. In a notary's instrument of the year 1489, we find the expression 'rural dean of the deanery of Christianity of Rutherglen' (*Regist. de Passelet*, 352).

the archdeacon and the rural deans. It was enacted in synod in the thirteenth century that every church in the diocese should be visited annually by the archdeacons or their deans, and that all defects in the churches and churchyards, the books, and *ornamenta*, should be brought to the bishop's notice with a view to their amendment.[1]

The archdeacons and deans were also commissioned to report on the lives and behaviour of the clergy within their respective jurisdictions. Thus, in the thirteenth century, deans as well as archdeacons were instructed to make careful inquiry throughout their deaneries whether any of the clergy publicly kept concubines.[2] And three hundred years later it is plain that the same duty was expected of them, for the statutes of the provincial council of 1549 require that each dean should take the oath *de fideli administratione*, in consequence of the charge brought against some of their number that they were not ashamed to take bribes for concealing the misconduct of concubinary or adulterous priests.[3] As early at least as 1201 we find the papal legate in Scotland assuming that the dean visited the parishes in his deanery.[4] Whether he visited independently of the archdeacon, or only as his deputy, is not quite clearly apparent.

In 1293, and again in 1316, we find that the deans of the Merse and of Haddington had the task of collecting the procurations and other dues of the bishop of St. Andrews payable in their deaneries.[5]

Among the ordinary duties of the dean of Christianity was the execution of the bishop's mandates. Thus it is common to find the parochial clergy instituted to their cures, that is, given corporal and actual possession of them, by the dean on the mandate of the bishop.[6]

It would seem that it had been at one time the duty of the dean of Christianity to hear the confessions of the clergy of his deanery. The evidence for this seems to be supplied by the ordinance of the thirteenth century that the bishop should appoint in every deanery 'prudent and

[1] *S.E.S.* ii. 54. [2] *S.E.S.* ii. 15. [3] *S.E.S.* ii. 93.

[4] *Reg. Glasg.* i. 81. [5] *Lib. de Dryburgh*, 182, 245.

[6] For example, see *Regist. Prior. S. Andree*, 403 ; *Cal. Pap. Reg.* iii. 165.

faithful men to be confessors,' to whom those rectors, vicars, and minor clerks may be able to confess, who perhaps are ashamed (*erubescunt*) to confess to the deans.[1] When instituted at rather a late period in the diocese of Dunkeld the rural deans acted as penitentiaries.[2] But the duties of the penitentiary were more extensive than those of an ordinary confessor.

The dislike of the clergy to make their confessions to one of the clergy of the neighbourhood is intelligible; and we find it expressing itself in England in Archbishop Peckham's ordinance of 1281. He retained indeed a learned and discrete confessor in each deanery (it is not said that he was to be a rural dean) to serve as penitentiary, but added that the clergy, if they preferred it, might resort to 'other common penitentiaries.'[3] The difficulty was met in another way by the synod of Dublin in 1217, which ordered the clergy of each rural deanery to elect two to whom priests might confess.[4]

The deans of Christianity not only executed the mandates of their own bishops, but, on occasion, were commissioned to do similar duties by the Pope's judge delegate. There is an example of a dean in the diocese of Glasgow receiving a mandate from a papal judge delegate to cite his own bishop to the court of the judge.[5]

Another useful function of the deans of Christianity was their receiving and transmitting to the proper quarter the alms and offerings given by the people of the parishes in their respective deaneries for extra-parochial objects, as, for example, in the thirteenth century for the building of the cathedral of Glasgow.[6]

The existence of persons to whom executive functions could be intrusted in the smaller diocesan subdivisions called deaneries must have proved convenient on many occasions. When in 1543 the Scottish prelates and clergy, assembled at St. Andrews, with patriotic zeal taxed themselves to the extent of 10,000 lib., 'usual money,' for the defence of the country against the English, and again,

[1] *S.E.S.* ii. 14.
[2] See Myln's *Vit. Episc. Dunkel.* p. 31.
[3] Wilkins' *Concilia*, ii. 54.
[4] *Ibid.* i. 548
[5] *Reg. Glasg.* 187.
[6] *S.E.S.* ii. 25.

when two years later they voted a further contribution of 13,000 lib., the machinery for gathering the tax was found ready to hand in the deans of Christianity. To each of his deans Cardinal Beaton addressed a missive appointing him collector in his deanery, and granting him authority to excommunicate any who refused to pay their proportion of the tax.[1] Earlier in the same century Archbishop Forman made use of his deans of Christianity for communicating his injunctions on various subjects to the clergy, not only secular, but monastic, within their respective deaneries.[2] The dean served also conveniently for the collection of information for state purposes. In 1428 the Scottish Parliament in an *Act annent Lipper Folke* enjoined on bishops, officials, and deans, 'to inquire diligentlie in their visitation of ilk paroche kirke, gif onie be smitted with Lipper.'[3]

There is not, so far as I am aware, any evidence to show that the dioceses of Brechin, Ross, and Caithness were divided into rural deaneries. Brechin was, no doubt, of but small extent; but it is not so easy to conjecture why such useful functionaries as the deans of Christianity were absent from the dioceses of Ross and Caithness. It may be that I have failed to find evidence with which others may be acquainted.

In the diocese of Dunkeld, rural deans do not appear before the time of Bishop George Brown (1483-1515), who according to Myln[4] eventually appointed four deans, one for the borders of Athol and Drumalbane; another for the part of Angus; a third for the parishes situated in Fife, Fothrik, and Strathern; and a fourth for the scattered churches of the diocese south of the water of Forth.

For the other dioceses we have early evidence of the existence of deaneries. St. Andrews contained (in the archdeaconry of St. Andrews) the deaneries of Fife, Fothric,[5] Goveryn (Gowrie), Angus, and Mearns;[6] and

[1] *S.E.S.* i. pp. ccliv-cclvii.

[2] See *S.E.S.* i. appendix xxiii.

[3] *A.P.* ii. 16.

[4] *Vit. Episc. Dunkel.* 30.

[5] The churches included in Fothric show it to be a region of considerable breadth running along the northern shore of the estuary of the Forth.

[6] See *Regist. de Dunferml.* 203-211; *Regist. Vet. de Aberbrothoc*, 232-245; *Regist. Priorat. S. Andree*, 28-37, 355-358.

(in the archdeaconry of Lothian), Linlithgow, Lothian (sometimes called Haddington),[1] and the Merse.[2]

The diocese of Glasgow was divided into nine deaneries: Lanark, Rutherglen, Lennox, Kyle and Cunningham, Carrick, Peebles, Teviotdale, Nithsdale, and Annandale.[3] Moray had deaneries of Elgin, Inverness, Strathspey, and Strathbogie.[4] The parishes of the diocese of Aberdeen were grouped in five deaneries: Garioch, Mar, Aberdeen, Buchan, and Boyne. In the sixteenth century the name of Formatine appears (1547) as a deanery of this diocese.[5]

In Boiamund's roll as preserved at the Vatican we find Galloway divided into the deaneries of Farnes, Rinnes, Desnes, and Glenken.[6]

In the diocese of Argyll there were deaneries bearing the names of Kyntire, Glassary, Lorn, and Movern; and the evidence points to these divisions having been made soon after the establishment of that diocese.[7]

It is generally supposed that Dunblane was not divided into deaneries of Christianity.[8] It has been remarked by

[1] Haddington is the name in Boiamund's roll (Theiner's *Monumenta*, p. 113).

[2] The names may prove misleading to the unwary: thus in Boiamund's roll the churches of St. Giles and St. Cuthbert, Edinburgh, are in the deanery of Linlithgow.

[3] *Reg. Glasg.* pp. lxiv ff. [4] *Reg. Morav.* 362.

[5] *Collections for a History of the Shires of Aberdeen and Banff*, 309.

[6] I have not observed Glenken as a deanery elsewhere (unless Glenken is the true reading in *Laing Charters*, No. 339), and I give its parishes as they are exhibited in the strange spelling of the record, viz.: Dalri, Trevercarcou, Kelles, Parcon, and Kircandres Balimeth (Theiner's *Monumenta*, p. 116). Some of these can be readily identified, but others I must leave to those better versed in the topography of the district.

[7] See *Origines Parochiales*, vol. ii. part i.

[8] But who could Martin, 'decanus de Menethet,' in 1235 have been? (*Chartulary of the Abbey of Lindores*, p. 55). It would be well if we possessed a complete list of deans as they appear in subscriptions and testing clauses. We find one Elyas, 'dean of Perth,' in the *Chartulary of Lindores* (p. 80). I suppose this name is a synonym for the dean of Gowrie. A dean of Clydesdale appears early in the Glasgow records (*Reg. Glasg.* 41, 46, 96, etc.). It is another name for Lanark. I do not know how to explain our finding a dean of Peebles and a dean of Stobo testing the same charter (*ib.* 73). We find a dean of 'Tiringham' (? Tiningham) in 1207 (*Cal. Pap. Reg.* i. 28). There was a dean of Forfar in 1214 (Spalding Club, *Collections*, etc. 561).

Dr. Grub that the Scottish diocese of the Isles was probably divided into rural deaneries, as we find a dean of Mull in 1532.[1]

The number of parishes associated together in a deanery varied much, from five or six to over forty.

We find in 1275 one person acting as dean of two deaneries at the same time. A certain Yvan styles himself 'dean of Christianity of Peebles and Lanark.'[2] But this is unusual.

Ruri-decanal chapters. There is evidence that there were at least occasional gatherings of the parish clergy of each deanery, which were known as chapters (*capitula*). Thus, in the thirteenth century, when great efforts were made for the completion of the structure of the cathedral of Glasgow, the sums contributed (under the stimulus of special indulgences) in the various parishes between the beginning of Lent and the first Sunday after Easter were to be handed over to the respective deans at the next ensuing chapter of the deanery.[3]

In 1221 there was a charter granted at Edenham *in pleno capitulo de Mersce*.[4] In 1245 there was held at Lauder a meeting of the eastern chapter of Lothian, at which a dispute between the nuns of Haddington and the Priory of St. Andrews was settled.[5] And other scattered notices may be found; but they are too brief to enable us to obtain information as to the business transacted or the procedure of these gatherings of the clergy.

The Archdeacon.

The archdeacon possessed large powers and large influence. As 'the bishop's eye' (*oculus episcopi*) he had the supervision of all the parochial clergy in his archdeaconry, he visited the churches, he was received and entertained in the manses, or received 'procurations' in money in lieu of entertainment.[6] He reported to the

[1] See *Ecclesiastical History of Scotland*, i. 278 note.

[2] *Reg. Glasg.* 187, 188, 190.

[3] *S.E.S.* ii. 25.

[4] *Lib. de Calchou*, No. 254.

[5] *Reg. Priorat. S. Andree*, 329.

[6] *S.E.S.* ii. 13.

bishop the result of his investigations. He had his court for the trial of spiritual offences; and we frequently find notices of his official, or judge who acted as his deputy in his court, distinct from the official of the bishop. The character of their office was scarcely such as to allow of archdeacons being popular with the parish clergy, and one sometimes comes across references to their being grasping; but I have found nothing to lead me to think that they were ever as heartily disliked in Scotland as they certainly were in England.

The archdeacon was also charged by the common law of the Church with the examination of the attainments of candidates for Holy Orders and of clerks presented to benefices.[1]

The frequent absence of bishops from their dioceses in attendance on the king or on political missions abroad, tended to raise the influence of their archdeacons. In the administration of the diocese the archdeacon was often in practice the chief authority. Capable men, often well versed in civil as well as canon law, were commonly appointed to these posts; and we have many instances of those who had filled the responsible position of archdeacon being appointed to vacant sees.

Our Scottish records, so far as I know, do not furnish any example of an archdeacon's articles of visitation, that is, the list of topics into which the archdeacon was to inquire. But we may safely assume that they were somewhat similar to those found in English documents.[2]

In England, however it may have been originally, the archdeacons succeeded in some cases, in process of time, in securing for themselves a jurisdiction independent of the

[1] See *Decretals of Gregory IX.* lib. i. tit. xxiii. 'De Officio Archidiaconi.'

[2] A few specimen questions out of the fifty issued for the archdeaconries of Lincoln in 1230 may be exhibited: 'Whether rectors, vicars, or parish priests are egregiously ignorant (*enormiter illiterati*)?'; 'whether any of the aforesaid are incontinent?'; 'whether any are married?'; 'whether any are drunkards or frequent taverns?'; 'whether any play at dice?'; 'whether any extort money for hearing confessions or for the other sacraments?'; 'whether any are non-resident?'; 'whether the adulteries or public crimes of laymen have been duly corrected by the archdeacons?'; 'whether any clerk or layman keeps a clerk's concubine in his lodgings?' See Wilkins' *Concilia*, i. 627, 628.

bishops. In Scotland it would seem that something of a similar kind was attempted by the archdeacon of Teviotdale in 1427-8. We find that the disputes between him and the bishop of Glasgow in regard to their respective jurisdictions reached a point which made it desirable to have the matter settled authoritatively. Instead of formal litigation before the Pope, the parties resolved to submit the questions in dispute to the dean and chapter of Glasgow, and agreed to abide by their decision. The arguments on behalf of parties having been heard, the dean and chapter after deliberation pronounced the following ordinance. (1) That the bishop had and was accustomed to have his commissaries in the archdeaconry of Teviotdale 'who were accustomed to sit, hear the process, judge, and terminate all and singular causes, as also in the greater archdeaconry of Glasgow.' (2) The archdeacon of Teviotdale was accustomed to have his commissaries who could take cognisance of all minor causes, judge and terminate them. (3) The archdeacon of Teviotdale had no power of depriving or imprisoning without the special mandate of the bishop. (4) There was an appeal by those who felt aggrieved from the judgment of the archdeacon or his commissaries to the bishop or his court.[1] This important document is, so far as I am aware, the most illuminative passage in Scottish record on the rather obscure relations of the courts of the bishop and archdeacon.

It will be observed that the bishop's court and the archdeacon's court were each regarded as having competent jurisdiction in minor causes. And apparently the judge in whose court the cause was first called was entitled to proceed in the case.[2]

Everyone who is at all familiar with the language of our Scottish records knows how frequently the word 'archdean' is used instead of the proper term 'archdeacon.' And this error is not confined to the vernacular; for examples can occasionally be found where 'archidecanus' is employed when 'archidiaconus' is

[1] *Reg. Glasg.* ii. 319-320.

[2] *Ibid.* 'In talibus locus erat preventioni litterarum commissariorum domini episcopi et archidiaconi.'

unquestionably the term which should have been used.[1] The confusion may in part perhaps be accounted for by the resemblance in sound between the two words. But I venture to suggest that it may have originated, or at least currency may have been given to it, through the fact that the archdeacon was in reality, in regard to many of his functions, 'the chief of the deans,' that is, of the deans of Christianity, who are sometimes spoken of as 'his deans.' In an early vernacular monumental inscription, certainly before 1380, we find an archdeacon of Dunkeld, Ingram de Kethenys by name, styling himself (for the monument appears to have been erected during his life-time) 'ersdene of Dunkeldyn.'[2] We find an ecclesiastic like Wyntoun using 'archdene' for 'archdeacon,'[3] and after his date the term is frequent. The word is found in the records of Parliament, where we meet the 'archdene' of St. Andrews, the 'archdene' of Glasgow, the 'archdene' of Lothian, etc. In the *Accounts of the Lord High Treasurer* (i. 1) William Scheres appears as 'archdene of St. Andrews' (1473). Sir William Sinclair of Roslin (Lord Justice General under Queen Mary) writes, 'arsedene of Tevidaill.'[4]

It is curious that English writers do not seem to have fallen into this error.

The Vicar General.

Scottish records throw little light on the office of the bishop's vicar general. But assuming that his functions were similar to those of vicars general in medieval England, we may say that he acted for the bishop in matters of non-contentious jurisdiction, and, generally, *in spiritualibus*, as distinguished from the bishop's official, who heard causes between parties, as to testaments, marriages, etc. In the Scottish General Council of 1549

[1] An example will be found in *Registrum Episcopatus Brechinensis* ii. 204.

[2] *Proceedings of the Society of Antiquaries of Scotland* (1895-1896), pp. 42, 43.

[3] *Cronykil* (Laing's edit.), ii. p. 236.

[4] *Extracta ex variis cronicis*, 255.

the vicars general of the vacant sees of Glasgow and Dunkeld appear in the list next after the bishops of other sees.[1]

We find the vicar general of Galloway, *sede vacante*, issuing the mandate summoning the abbots, priors, and others to appear at the General Council of 1558-9.[2]

In James II.'s Parliament of 1449 an act was passed ordaining that the vicars general of vacant sees should collect all the fruits and revenues of all benefices mensal of the bishop so far as they pertained to the *spirituality*, that is, tithes, oblations, etc., and should render an account of them to the next bishop on his appointment. The 'temporalities,' that is, the rents of bishops' lands, issues of court, etc., during the vacancy belonged to the crown.[3]

In 1546 we find the vicar general of St. Andrews appearing before Parliament by his commissary to repledge from Parliament a clerk, 'John Young, chaplain,' accused of being 'art and part takar' of the murder of Cardinal Beaton. The commissary assigns a day to the queen's advocate to compear in the consistory aisle of St. Giles' church in Edinburgh before the commissaries to be deputed by the vicar general, and there to hear and see justice ministered upon the said John Young.[4]

Presentations by patrons of ecclesiastical preferment were made to the vicar general, *sede vacante*, or if the bishop were *in remotis*; and he dealt with them. In Scottish records he appears as a person distinct from the bishop's official.

[1] *S.E.S.* ii. 82.
[2] *Ibid.* 145.
[3] *A.P.* ii. 38.
[4] *Ibid.* 467.

CHAPTER XIV

THE SYNODS OR COUNCILS OF THE SCOTTISH CHURCH

The most important of the conceptions that governed ecclesiastical action during the medieval period was that all spiritual authority and jurisdiction was derived from the Bishop of Rome, and that to the Bishop of Rome the judgments of every church court might be carried on appeal. The state, the civil power, on several occasions resented, and sometimes resisted the papal claims when they were regarded as encroaching on civil jurisdiction. But it was impossible for any ecclesiastic, brought up from childhood in acceptance of the prevailing conceptions as to the source of spiritual authority, to do more than murmur at the successive steps by which that authority advanced its pretensions and extended the sphere of its influence. Every step was only the legitimate outcome of principles that had long been conceded in theory.

The ecclesiastical history of Scotland during the medieval period, like that of every country in Europe, presents a continuous moving scene of references to Rome, sometimes for the confirmation of episcopal and other elections, and in later times in the form of petitions for 'provision' not only to the prelacies, but to all manner of ecclesiastical benefices; sometimes by way of appeal against the decisions of the local tribunals; sometimes for dispensations from the requirements of the canon law of the Church; sometimes for the revision of former pronouncements alleged to have been made in error as to

matters of fact; sometimes as supplications for exemptions or for grants of special privileges; sometimes as applications for authoritative confirmations of lands, churches, or other rights to which the monasteries or cathedrals laid claim. One cannot read the records of the time without coming to the conclusion that very few weeks could have gone by without special messengers, petitioners, litigants, or duly authorised procurators of parties in litigation being found making their journey to or from the papal court.

Again, not infrequently, more especially in the earlier part of the period with which we are dealing, the Pope, very wisely, instead of deciding questions at Rome, appointed from among the Scottish clergy certain persons who were in each particular case to investigate the facts on the spot, and either decide the matter forthwith, or sometimes (for the terms of the commission varied in different cases) to report to Rome.

In the earlier days of the Church's history the metropolitans of the various provinces ordinarily confirmed episcopal elections, and, in general, decided conclusively causes appealed from the judgment of the bishop of a diocese. In Scotland there was no metropolitan till 1472. Hence, Scotland occupied the very anomalous position of affording no opportunity of appeal to a local superior judge from the judgment of a bishop. It is also apparent that there was no local authority entitled to intervene in any dispute that might arise between two bishops. From this condition of things it came to pass that Scotland, though remote in place, had probably a closer connexion with Rome than any other country in Christendom, outside 'the Patrimony of St. Peter,' and was thrown into particularly intimate relations with the Holy See.[1]

Subordinate to the principles and pronouncements of the Roman canon law, a considerable body of ecclesiastical legislation had its origin in the different kingdoms

[1] The comparison indicated above has special reference to the earlier times, before appeals to Rome from the judgments of metropolitans became frequent and were too commonly encouraged at Rome. See St. Bernard's protest against the beginnings of this abuse in his outspoken Epistle (No. 178) to Innocent II., and in his scathing exposure of Roman corruptions in his treatise *De Consideratione*, addressed to Eugenius III. *Opera*, vol. i. p. 76 and p. 190.

of Europe from the action of provincial synods. There are also frequent examples, both in England and Scotland, of councils being held by the authority of papal legates, who happened to be present from time to time in these countries. The laws and constitutions enacted at such synods or councils are sometimes no more than promulgations of canons already recognised, but more often they are of the nature of working by-laws, adapting general principles to the requirements of the time and place.

The canons and constitutions of provincial, or of legatine councils, are of special interest as contributing much material from which we are enabled to construct a tolerably full picture of some aspects of ecclesiastical life during the middle ages. The records of Scottish councils that have survived the general destruction of Church documents at the Reformation are, unfortunately, meagre when compared with the mass of material that relates to the Church of England during the same period. Yet from them we are able to learn much of such important subjects as the extent of episcopal authority, the rights of the parochial clergy, the law of teinds, the relations of rectors and vicars, the laws affecting the landed property of the Church, the building and repair of churches and manses, the laws of last wills and testamentary instruments, the law of marriage, the discipline of the clergy, and very much relating to the spiritual work of the Church, the dispensation of the sacraments, and questions of order and ritual. To which we must add that many interesting glimpses are afforded incidentally of the religious life of the people.

The councils or synods (the words are used indifferently) of the Scottish Church, with which we are concerned (apart from episcopal or diocesan synods), fall into three classes.

First, there were legatine councils, that is, councils summoned by a legate of the Pope. Some nine or ten of such councils were held in the twelfth and in the early years of the thirteenth century. They were generally convened to meet in Scotland; but occasionally the legate chose some place in England to which the Scottish prelates were summoned to attend.

Secondly, we have a large number of councils, dating from the year 1225, when the Pope, in response to the request of the Scottish bishops, gave authority for the holding of annual provincial councils, in accordance with the ordinance of the fourth Lateran council, although Scotland did not yet possess a metropolitan, by whom the canon of the Lateran council enjoins that such annual provincial councils should be held. The plan devised to meet the peculiar case of Scotland at this time will be described later on.

Thirdly, after Scotland had been put in line (1472) with the other countries of Europe by the erection of St. Andrews into a metropolitan see, it was possible under the common law of the Church for the archbishop to convene provincial councils. As a matter of fact, however, owing, probably, to the violent and acrimonious disputes between the Archbishop of St. Andrews and the Archbishop of Glasgow in respect to jurisdiction, provincial councils under a metropolitan were not held, so far as evidence has been forthcoming, till the very brink of the great ecclesiastical revolution that is known as the Reformation. Three important councils were held in the space of ten years, namely, in 1549, 1552, and 1558-9. They were intended to reform abuses, and so to check the violence of the revolutionary movement. But they came too late. What might, perhaps, have been effective if taken in hand fifty years earlier was now wholly futile. The statutes enacted by these three councils have happily come down to us, and they are of much value in illustrating the history of the Church at the time; but they belong to the more modern period, and will not be dealt with by me except in so far as they may occasionally illustrate the statutes of middle ages.

The first writer who treated of the councils of the Scottish Church with anything like adequate information was Father Thomas Innes, who generously contributed a valuable little treatise on the subject to the great work of Wilkins, the *Concilia Magnae Britanniae et Hiberniae* (1737).[1]

[1] Innes's *Epistola ad Editorem* has been reprinted in Grub's edition of Innes's *Civil and Ecclesiastical History of Scotland* (Spalding Club), pp. xxxix-lii.

Again, Sir David Dalrymple of Hailes printed in 1769 a quarto pamphlet entitled 'Canons of the Church of Scotland drawn up in the Provincial Councils held at Perth, A.D. 1242 and A.D. 1269,' and illustrated them with a few useful notes, showing, *inter alia*, how largely the Scottish statutes were derived from English sources. But all previous labours are cast entirely into the shade by Joseph Robertson's masterly *Concilia Scotiae*, printed for the Bannatyne Club.[1] It is impossible to treat of the Scottish councils without offering one's tribute of gratitude and hearty admiration for the thorough and scholarly labours of Mr. Robertson. In his admirable work we have carefully printed texts of such statutes, whether provincial or diocesan, as have survived, together with various readings supplied from MSS., while in the *Preface*, occupying the first volume, the whole subject is treated with a wonderful wealth of illustrative information, intelligently and pertinently applied. Mr. Robertson's volumes can never be long absent from the hands of anyone who aims at an accurate knowledge of the history of the medieval Church in Scotland.[2]

I. *Legatine Councils.*—The notices of the legatine councils held in Scotland, or attended by the Scottish prelates, are scattered here and there in the records of the old chroniclers and historians. They are unfortunately very brief and often unsatisfactory. We learn, however, enough to see that they were generally convened to determine, or else report to Rome, upon some controversy pressing at the time. In two councils, at least, statutes were enacted. But their nature and purport do not appear with the exception recorded by Fordun of a canon enacted at the council held at Perth in 1201, which

[1] *Concilia Scotiae, Ecclesiae Scoticanae statuta tam provincialia quam synodalia quae supersunt.* MCCXXV.-MDLIX. 2 Tom. Edinburgi, 1866—[the work cited in these pages *passim* as *S.E.S.*].

[2] Scotland has good reason to be proud of the little group of scholars, of whom Joseph Robertson, Cosmo Innes, John Stuart, and George Grub were the most distinguished. But, unhappily, they bred up few to succeed them. Invaluable as Robertson's work is, one cannot but regret that he did not in his notes explain and illustrate more fully some of the more obscure of the statutes that belong to the thirteenth and fourteenth centuries. He was quite familiar with the sources of information that would have enabled him to clear up many difficulties.

decreed that clergy who had received the order of priest on a Sunday were to be removed from the ministry of the altar. It was held to be a special prerogative of the Pope to confer holy orders on the Lord's day. Saturday was the day when, according to ancient rule, bishops were to celebrate their ordinations of priests, deacons and sub-deacons. But I have not succeeded in finding a parallel for the severe penalty inflicted, not, it should be observed, on the offending bishop, but on those whom he had admitted to the priesthood on a forbidden day. The legatine councils were attended by the heads of monastic houses as well as by the bishops.[1]

Even after the formal establishment of the annual provincial councils, we find that when a papal legate happened to be commissioned to Scotland, he sometimes convened the Scottish clergy in synod, as in 1239 at Holyrood. And in 1269, when King Alexander III. refused to admit Cardinal Othobon into Scotland, the legate summoned the Scottish bishops, two abbats and two priors, as Bower puts it, *pro toto clero Scotiae*,[2] to London. The bishops with one consent resolved to send two of their number to watch that nothing should be enacted to their prejudice in their absence. 'The rest of the clergy,' to use Bower's language, sent one abbat and one prior. The legate enacted certain new statutes which, the historian informs us, the Scottish clergy utterly refused to observe. The only point of this interesting incident which for our purpose is worth observing, is that the heads of monastic houses were taken to represent the clergy generally.

II. *Provincial Councils held under the special privilege granted by the Pope in the year* 1225.—The fourth Lateran council, in many respects the most influential of the general councils of the Middle Ages, was held, under Pope Innocent III., in the year 1215. It was attended by the Latin patriarchs of Constantinople and Jerusalem, 27 metropolitans, 412 bishops, and more than 800 abbats

[1] The character of the subjects dealt with in the legatine councils can be seen at a glance by referring to the summary given in the Additional Note appended to this chapter.

[2] *Scotichronicon*, lib. x. cap. 24.

and priors. From Scotland there were present the Bishops of St. Andrews, Glasgow, and Moray, and the Abbat of Kelso, while the other Scottish prelates were represented by their procurators.

Among the many imporant enactments of this great council we find one (*VI. De Conciliis Provincialibus*) directing that metropolitans should not omit to follow the ancient ordinance of celebrating with their suffragans provincial councils every year.

The object of such annual provincial councils was, according to the Lateran statute, to provide by careful deliberation 'for the correction of excesses and the reformation of morals, especially among the clergy.' To this end the canons of the Church, and more particularly those enacted by the Lateran council, were to be read over, and their observance insisted on by the infliction of due punishment upon offenders. It was further ordained that whatever decrees might be made by the provincial council should be published in each diocese in the annual episcopal (*i.e.* diocesan) synod. Suspension from benefice and office was to be the penalty for disobedience.[1]

The Scottish bishops were at once confronted with the fact that they had no metropolitan, and therefore could not give effect to the requirement of the Lateran statute. They represented the facts to the Pope; and just ten years after the Lateran council a remedy was provided.

The Papal Bull (1225) marks an era, and is of so much importance that it may be well to give it in full. 'Honorius, Bishop, servant of the servants of God, to our venerable Brethren, all the Bishops of the realm of Scotland, health and apostolic benediction. Certain of you have lately brought to our knowledge that because you have not an Archbishop, by whose authority you could celebrate a Provincial Council, it comes to pass that in the realm of Scotland, which is so remote from the Apostolic See, the Statutes of the General Council [Lateran IV.] are neglected, and very many irregularities (*enormia*) are committed, and remain unpunished. Now whereas Provincial Councils ought not to be omitted, in

[1] *Mansi*, Tom. xxii. col. 991.

which with the fear of God before your eyes you should diligently consider the correction of excesses and the reformation of morals, and in which the canonical rules should be read over and maintained, especially those enacted at the same General Council, we by apostolic ordinance (*per apostolica scripta*) command you to celebrate, by our authority, a Provincial Council, inasmuch as we are aware that you have no Metropolitan. Given at Tivoli, xiv. Kal. Jun. in the ninth year of our pontificate.'[1]

The persons summoned to attend the Scottish provincial councils were the bishops (*prelati majores*), the heads of the great monasteries, *i.e.* the abbats and priors of priories[2] (*prelati minores*), and proctors from capitular bodies, whether secular or religious. There does not seem to be any clear indication of representation being afforded to the great body of the parochial clergy.

The bishops chose one of their own number, who presumably presided at the council, and to whom certainly the distinction was given of taking the place of honour at the religious service, which preceded the session. This prelate was designated 'the Conservator of the Council.'[3] He issued the summons to the next council, and to him was intrusted the right of fixing the place and time of meeting. He held office only for the year, and it was his duty to punish with the censures of the Church manifest and notorious violators of the statutes.

The summons to the council was addressed to each bishop, requiring and very earnestly exhorting him in the Lord to be present 'with the prelates of his diocese' and the proctors of chapters at the place and on the day appointed.

[1] 19 May, 1225. The original text is printed in *S.E.S.* ii. 3; and in *Regist. Aberdon.* ii. 3.

[2] 'Priors of priories' is an expression used to distinguish the heads of certain houses from the office *second* in command to the abbat in some monasteries that were not priories. The prior of a priory was sometimes known as a *prior conventualis*, while the abbat's subordinate was known as *prior claustralis*.

[3] *S.E.S.* ii. 3, 9; also as 'conservator of the statutes of the councils,' *S.E.S.* ii. 10; also, as 'conservator of the privileges and rights of the Scottish Church,' *S.E.S.* i. 52.

The ceremonial to be observed at the opening of the council is briefly sketched, a knowledge being naturally assumed which we can now only imperfectly supply. The bishops were to wear albs, amices (*amictus*), and copes, their solemn mitres, and their gloves, with their pastoral staffs in their hands. Abbats were to wear surplices and copes, and the mitred abbats were to wear their mitres. Deans and archdeacons were to be vested in surplices, amesses (*almutia*), and copes.[1] Other clergy present were simply directed to be vested in decent and comely habits.

The deacon appointed to read the gospel, which as in England and elsewhere was a passage from the Gospel according to St. John, beginning, 'I am the Good Shepherd,' first proceeded, accompanied by the subdeacon and with two taper-bearers in front, to ask the blessing of the conservator, or (in his absence) of the senior bishop. After the gospel had been read the gospel-book was kissed by the conservator and each of the bishops. Then the conservator began the hymn, 'Veni Creator Spiritus'; and at every verse the altar was censed by the bishops. After this followed the sermon, the preacher first asking the benediction of the conservator. The sermon at the councils in succession was to be preached by the bishops in turn, the first on the roster being the Bishop of St. Andrews. But, apparently, a bishop might propose a substitute for the performance of this duty.

When the sermon was finished, those who had been cited to the council were called; and those absent, without an impediment canonically recognised as sufficient, were punished according to the statutes.

After this the statutes of the fourth Lateran council were read through. And then came a very striking ceremony, known as the general excommunication. The bishops held each a lighted candle in his hand; and without naming any individual, a long catalogue of

[1] Some account of the vestures and ornaments will be found in a paper by the writer on the 'Inventory of Glasgow Cathedral, 1432,' in the *Proceedings of the Society of Antiquaries of Scotland*, 1898-99, pp. 280-329.

grievous offenders of various classes was recited. At its close the formula of excommunication was pronounced. It ran as follows: 'Cursed may all the aforesaid be; cursed be they within and without, from the sole of the foot to the crown of the head; may their part be with Dathan and Abiram, whom the earth swallowed up quick. May their days be few, and may others take their possessions. May their children be orphans. And, as this light is now extinguished, so may their lights be extinguished before Him who liveth for ever and ever. And may their souls be sunk in hell, unless they repent, and satisfy for their offences, and come to amendment. So be it. So be it. Amen.' At the proper moment the candles were thrown on the ground, and extinguished: and the bell was tolled.

The classes of offenders against whom these terrors of the Church were directed included perjurers, robbers with violence, thieves, incendiaries, poisoners and their abettors, coiners and them that 'clipped the King's money,' and generally all that broke 'the King's peace and the peace of the realm,' as well as a variety of persons who violated the laws and liberties of Holy Church. In truth the impressive rite of the general excommunication was a constant protest on behalf of morality and civil order, as well as a weapon wielded on behalf of ecclesiastical rights and privileges. Alien and repellant as are the form and language of the general cursing to the temper of our time, it would be rash to assume that it did not serve a useful purpose in a barbarous age.

At the close of the religious rites which we have briefly sketched, the business of the council was entered upon. The business was varied in character. Sometimes there were disputed questions to be dealt with. Sometimes cases brought during the year under the notice of the conservator, violations of Lateran statutes, or disobedience to enactments of the provincial council would require consideration. Occasionally, but, I think, rarely, new rules, canons or statutes, intended to meet new circumstances and conditions, would be proposed, debated and adopted or rejected.

The Lateran rule was, as we have seen, that the provincial council should meet every year. The comparatively few notices of meetings of the provincial council that have come down to us in the pages of the historians and chroniclers have suggested that, as a matter of fact, the council was not held annually. But the inference seems to me to be in a high degree hazardous. When we consider the meagre notices of the monastic chronicles and the imperfect materials upon which even the best of our historians worked, we cannot wonder that notices of the meetings of the provincial council, often, we may well believe, of a quite formal and perfunctory nature, are so few. Indeed, occasionally, an incidental notice occurring in a summons or a writ reveals to us the existence of provincial councils of which the historians make no mention.

Of the ecclesiastical statutes that have come down to us from the thirteenth and fourteenth centuries one collection consists of statutes of the episcopal (that is, diocesan) synod of Aberdeen, and two others consist of statutes of the diocesan synod of St. Andrews, one of them bearing date 1242, and the other being attributed, with reason, to the fourteenth century. I believe, however, that these statutes in each of these three cases were in all probability first enacted, in the main, at some provincial council. It was the rule laid down by the Lateran council that statutes of the provincial council should be published in the diocesan synods; and I cannot but think that the statutes of Aberdeen and St. Andrews, referred to, are substantially local promulgations of laws having a higher authority. Many of these statutes are indeed of a kind which a diocesan synod had no authority to enact. It must be remembered that, according to the doctrine of the canon law, even provincial councils could make enactments only to give effect in practical detail to accepted principles or to constitutions otherwise established and of force.[1]

[1] See Lancelot's *Institutiones Iuris Canonici*, lib. i. tit. iii. 4, 5. The primary object of provincial councils is thus stated: 'Provincialia Concilia sunt quae propter ecclesiasticas causas et altercationum sedationes per singulas Provincias, convocante Metropolitano Episcopo, omnes pro-

As regards the legislative action of the Scottish provincial councils we are left in no doubt that the statutes of English councils of the thirteenth century were largely drawn upon, and sometimes adopted almost *verbatim*. The Scottish statutes have little or nothing of what may be called local colour. There are very few that cannot be closely paralleled from contemporary English councils. Mr. Joseph Robertson has done something in illustrating this fact, and any careful student of Wilkins' *Concilia* will have no difficulty in largely extending the range of Mr. Robertson's observations.

The Scottish Church was always strenuous in its determination to yield no subjection to the jurisdiction of either York or Canterbury; but it was the part of good sense not to refuse to follow what seemed to be wise legislation, although it had its origin in England. It was in a similar spirit that the Scottish Church adopted for its ecclesiastical service-books generally throughout the country the forms of worship presented in the widely accepted 'use' of the Church of Salisbury.

Robertson conjectures that 'it is not improbable that some of these canons [that have come down to us] may have been handed down from the legatine councils of the twelfth century.'[1] I concur with the view expressed, for, to judge from the case of England, the general character of ecclesiastical legislation in the twelfth century was quite of a piece with that of the thirteenth.

So far as I am aware, we possess positive evidence for no more than nineteen provincial councils between the year

vinciales Episcopos et Cathedralium Ecclesiarum Capitula celebrari placuit. Haec autem neque definiendi neque generaliter constituendi vim aliquem habent: sed tantum curandi, ut id servetur quod alias statutum est, et quod generaliter seu specialiter observari preceptum est: licet interdum et quae ab his recte statuta sunt, etiam Catholica Ecclesia suscipiat.' Lancelot, no doubt, represents the latest developments of the papal view; but even at the time with which we are dealing, provincial councils were chiefly concerned, as regards their legislative action, with enacting what we may call working by-laws for the giving effect to the accepted rules and principles, which had force throughout the whole of western Christendom.

[1] *S.E.S.* i. liv.

1225 and the erection of the archbishopric, that is for a space of 247 years. The notices are commonly of the briefest kind. But in a few cases we learn something of the nature of the business that was considered. Thus, in 1238 judgment was passed on a controversy between the Earl of Menteith and the Bishop of Dunblane. In 1242 the clergy complained of the detention of their tithes by certain persons of rank. The king, Alexander II., entered the council, accompanied by his earls and barons, and in response to the complaint, gave commandment that no one of whatever rank should in any way interfere with the rights and liberties of the Church. In 1268 a provincial council excommunicated the Abbat of Melrose and great part of his monks for violating the sanctuary of Wedale by breaking into the houses of the Bishop of St. Andrews, killing a clerk, and wounding several others. In 1275 the provincial council had under consideration Boiamund's proposal to assess the clergy of Scotland on the 'Verus Valor' of their benefices. In 1280 the Bishop of Moray in provincial council claimed that the other bishops should denounce Sir William Fenton, Lord of Beaufort (an excommunicated person) as under the ban of Holy Church, and to be strictly shunned by all the faithful. In 1325 the Bishop of Glasgow protested against a claim of the king to present to all benefices in the gift of the bishops, which fell vacant between the death of a bishop and the rendering of fealty and homage to the king by his successor. In 1420 a provincial council asserted the rights of the bishops and ordinaries to confirm testamentary dispositions and to administer the goods of persons dying intestate. In 1457 a provincial council gave its voice on behalf of the king, as in opposition to the Pope, in respect to the right of presenting to ecclesiastical benefices, *sede vacante*. Two years later (1459) the provincial council made a declaration that the claim of the king asserted at the previous council was supported by ancient custom. In 1465 a dispute as to certain tithes between the Bishop of Dunblane and the Abbat of Arbroath was settled. In the next council of which we have record (1470) a dispute between the Rector of the University of St.

Andrews and the Provost of St. Saviour's College as to the right of conferring degrees in Arts and Theology was settled.[1]

The notices now given suffice to show that the business of the provincial council was of a varied description. They afford us a few specimens of the kind of questions considered and dealt with in the councils. Not one of them refers to the enactment of statutes or canons, and yet we know that legislation was part of the work from time to time of the provincial synods.

The subject of the constitution of the provincial council is of such importance that it may be well, before concluding this chapter, to present to the reader certain passages from a notarial instrument preserved in the *Register of Brechin* (i. pp. 38-40), which, being added to the notice already quoted (p. 230), constitutes the fullest account we possess of the membership of the council. In 1420 there was held in the church of the preaching friars at Perth a 'Provincial Synod and General Council of the clergy of the realm of Scotland.' After mass, and the invocation of the Holy Spirit, and a sermon to the clergy, William, Bishop of Dunblane, was elected 'Conservator of the Privileges.' There were present the Bishops of St. Andrews, Dunkeld, Aberdeen, and Brechin, and proctors of the Bishops of Moray, Candida Casa, and Caithness, and of the Bishop, elect and confirmed, of Ross; the Prior of St. Andrews, the Abbats of Cambuskenneth, Lindores, Cupar, and Newbottle; proctors of the Abbats of Dunfermline, Kelso (Calcow), Melrose, Holyrood, Arbroath, Jedburgh (Ghedworth), Dryburgh, and Paisley; 'very many deans, archdeacons, priors of monasteries, and the greater part of the clergy, who are customarily congregated in council and general synod.'[2]

Now the question arises,—Who are meant by the greater part of the clergy accustomed to be congregated? Had the parochial clergy any representation? The

[1] The original authorities for the notices given above will be found in *S.E.S.* i. pp. lv-cviii.

[2] The words referring to the 'clergy' are, 'presentibus . . . . . et majore parte cleri que in Consilio et Synodo Generali consuevit congregari.'

answer to this question must, I believe, be in the negative. We have the summons to a general council preserved in the *Register of Moray*.[1] It is addressed by the conservator to each diocesan bishop, and requires him to attend 'with the prelates of his diocese, and with fit proctors of chapters, colleges (*collegiorum*), and convents.' Not a word is said of the parochial clergy. The *collegia* referred to were, presumably, collegiate churches. It would seem then, that besides the *prelati* there were other representatives of the cathedrals, the monasteries, and the collegiate churches. These would in most dioceses bring a considerable body of ecclesiastics who did not belong to the class of either greater or lesser prelates. Other clergy were probably present, and might be called on to give evidence on some question before the synod; but were not (as I suppose) members of synod.

III. *Provincial Councils (or Synods) after the establishment of the Archbishoprics.*—When we come to the Scottish synods of the sixteenth century we find present in the provincial synod of 1549 bishops, vicars general of vacant sees, abbats, and priors, including the commendators of abbeys (among them James, whom we know best as the Regent Moray, then a youth of eighteen), ten ecclesiastics who were doctors, bachelors, or licentiates in theology, three dominicans, and four friars minor.[2] And of the secular clergy we find eight provosts or deans of collegiate churches, and several dignitaries (whether representatives or not) of certain cathedrals. From the parish clergy we find a solitary rector from the diocese of St. Andrews. An examination of the lists makes one suspect that the primate and the bishops invited whom they would. It seems that one of those present was not a member of the Scottish Church, Friar Richard Marchell, 'professor divinarum litterarum,' —who is described as 'Anglus,' and is supposed to have been the prior of the Black Friars at Newcastle. I can only offer the conjecture that perhaps he and the other

[1] p. 375, and *S.E.S.* ii. p. 3.

[2] It would seem that it had been designed to have representatives of the Austin canons, the Trinitarians, and the Carmelites; but the names of their representatives, if there were any, are not recorded.

men of learning were present as theological assistants and assessors.

The list of those present at the provincial council of 1558-9 is not extant, but the acts of the council describe it as consisting of 'the two archbishops, their suffragan bishops, vicars general, abbats, priors, commendators, deans, provosts, professors of sacred letters, rectors, and other lettered ecclesiastics, representing the Scottish Church.' And the letter of the Archbishop of St. Andrews to the Archbishop of Glasgow with directions for the summoning of the council leaves it to his discretion to summon any 'ex famosioribus, consultioribus, et prudentioribus de capitulis et clero' of his church, city, diocese, and province. The Archbishop of Glasgow, acting on this authority, directs his deans of Christianity to summon, together with abbats, priors, commendators, usufructuaries, ministers, preceptors, and provosts, 'insigniores ac probiores *rectores et vicarios perpetuos*,' and goes on to specify more especially six rectors by name. It does not appear, however, that any of these were selected by their brethren. They were of the parochial clergy, but their nomination seems to have rested with each bishop for his own diocese. The vicar general of Whitherne (the see was vacant) writes to one of his deans of Christianity in a similar strain. The choice was probably as good as any that might have been made by the vote of the parish clergy; but in a strict sense it was not representative.[1]

On a further examination of the list of those present at the general synod of 1549, there seems to be no representative of any kind from the diocese of Ross or Caithness; and from Orkney and Dunblane only the bishops. Again some dioceses contribute a larger number of clergy than others. There certainly seems to be nothing like the truly representative assembly found in the convocation of the Church of England. I am able to offer no reasonable or consistent account of the constitution of this synod; and I lean to the view that the bishop of each diocese enjoyed a large discretion as to whom he would summon, and that he chose

[1] The evidence will be found in *Stat. Eccl. Scot.* ii. 140 ff.

men whom he thought most capable to give counsel or advice.

Episcopal Synods.—As we have seen, the Lateran council directed that the decrees of provincial synods should be promulgated in the synods to be celebrated every year in each diocese. The notices of such episcopal or diocesan synods are not numerous. We possess a body of statutes promulgated at Aberdeen in the thirteenth century, and another body of statutes promulgated in a diocesan synod of St. Andrews in the same century (5th May, 1242). The latter synod was held in Musselburgh.[1] This shows that the episcopal synod was not necessarily held at the episcopal see.

Again, in 1235, the Bishop of Dunblane held a synod in the church of Auchterarder, and there he confirmed an arrangement as to disputed rights 'coram prelatis et clero nostrae diocesis.'[2] Again we find another synod held at Gask in 1239.[3]

One of the St. Andrews fourteenth century statutes ordains that every rector and vicar should have a copy of the statutes, and should bring it with him to the synod every year, under a penalty of forty shillings. This points to the obligation of attendance by all the beneficed clergy. The heads of religious houses within the diocese (unless specially exempted) were bound to attend. But the claim sometimes made by bishops that the heads of monasteries possessing parishes in their dioceses, though the monastery itself was situated in another diocese, were bound to attend, does not seem to have been sustained.[4]

Additional Note.

A Summary Account of Scottish Legatine Councils, before the year 1225.

The original authorities for what follows will be found collected and exhibited at length by Robertson (*S.E.S.* i. pp. xxvi-xliv).

[1] *S.E.S.* ii. pp. 30, 53. [2] *Chartulary of Lindores*, p. 55. [3] *Ibid.* p. 59.

[4] See the able legal opinion on the subject arising out of the claims of the Bishops of Aberdeen and Brechin that the Abbat of Lindores, in the diocese of St. Andrews, should attend their synods. *Chartulary of the Abbey of Lindores*, pp. 212 ff.

(1) A.D. 1125, at Roxburgh, Cardinal John, of Crema, held a council of Scottish Bishops, to investigate and discuss the controversy between the Archbishop of York and the bishops as to jurisdiction; the Pope reserving the final decision to the judgment of the Apostolic see.

(2) A.D. 1138, at Carlisle (then subject to Scotland), Cardinal Alberic, Bishop of Ostia, legate of Innocent II. The Scottish clergy, who had favoured the Antipope (Anacletus), unanimously submit to Innocent. The Galwegian Picts promise to release the women whom they had carried captive, and in future to spare in warfare women, children, the aged, and the sick. Bishop John of Glasgow is recalled to his see. This council lasted for three days.

(3) A.D. 1164, at Norham, on the Tweed, Roger, Archbishop of York, legate of Alexander III. The Scottish clergy by certain representatives disclaim the legate's authority, on the ground of its having been surreptitiously obtained. They appeal to Rome.

(4) A.D. 1175-6, at Northampton, Cardinal Huggucio Petrileonis, legate to England. Many (Fordun says *all*) of the Scottish bishops attended. They deny that they owe obedience to the Church of England.

(5) A.D. 1177, at the Castle of Edinburgh (*apud castrum puellarum*) Cardinal Vivian Tomasi held a council, renewing (*renovans*, but according to another reading, *revocans*) many old statutes. The immunities of the Cistercians were curtailed.

(6) A.D. 1180, at Holyrood, Edinburgh, Alexis, legate, heard the cause between John Scot and Hugh, the rivals for possession of the bishopric of St. Andrews, and decided in favour of John.

(7) A.D. 1201, at Perth, Cardinal John of Salerno heard and determined a controversy between the monks of Kelso and the Bishops of St. Andrews and Glasgow; and enacted many canons.

(8) A.D. 1212, at Perth, William Malvoisin, Bishop of St. Andrews, and Walter, Bishop of Glasgow, had been granted legatine powers. The bishops, in obedience to the desire of the Pope, agreed to preach a crusade for the relief of Jerusalem.

(9) A.D. 1220, place not ascertained, Cardinal Giles (Aegidius) of Torres, as Apostolic Nuncio, received a subsidy for the relief of the Holy Land.[1]

(10) A.D. 1221, at Perth, James, Canon of St. Victor, at Paris, legate. The council sat for four days. A question as to matrimonial law in regard to Allan of Galloway, Constable of Scotland, inquired into. A dispute between the prior and canons of St. Andrews, on the one part, and their bishop and the keledei of that city, on the other, inquired into. The king (Alexander II.) requests that he may be crowned by the legate. The request is referred to the Pope.

[1] It may be questioned whether the name *council* should be applied to this gathering of 'all the Scottish prelates at the command of Ægidius, the Apostolic Nuncio' (*Scotichronicon*, lib. ix. cap. 36). He seems to have come to obtain the subsidy of the twentieth part of all ecclesiastical goods, which had been enjoined in the Lateran council (1215), and to have accomplished his mission. The summoning of all the prelates was perhaps only as an effective means to this end.

CHAPTER XV

THE STATUTES OF PROVINCIAL AND DIOCESAN SYNODS

The matters treated of in the legislative enactments of the Scottish synods are very various in kind. The statutes deal chiefly with the duties and the conduct of the clergy, but occasionally they concern directly the lives of the lay-people.

There is little or nothing of systematic arrangement in the contents of the collections of statutes which have come down to us. In the description which follows I have placed under separate heads the substance of statutes, mainly of the thirteenth century, scattered in various places. The description is necessarily as brief as is consistent with clearness.

Many of the ordinances are only republications of provisions of the general canon law of western Christendom; and, as has been said, many are derived from the enactments of synodical or episcopal constitutions made in various English dioceses. I have thought it better to omit, or but refer to in the briefest way, the many statutes which are dealt with elsewhere in these pages. And such a work as the present is obviously not the place for treating the minute particulars of ritual and ceremonial, however interesting these might be to a few technical students of liturgiology. I must be content with the broader and more essential features of the subjects treated.[1]

[1] It is to be hoped that before long Dr. Patrick's promised volume of a translation of the statutes may be issued by the *Scottish History Society*, when the curious, who have no opportunity of studying Robertson's *Statuta Ecclesiae Scoticanae*, will find all the details. [The volume referred to was published in 1907.]

I. *The Faith of the Church.* The Catholic faith was to be taught by all prelates to those who were subject to them; and the parish clergy were to instruct their parishioners, and to enjoin on them the duty of teaching their children to know and observe the articles of the Christian faith.[1] In another statute the Lord's Prayer and the Symbol, that is, the Apostle's Creed, are mentioned as the subjects of the parish priests' instructions.[2]

II. *The Sacraments.* The 'form' of the sacraments (that is, the prescribed *formulae* of words, which were held to be necessary to the validity of the several sacraments) was in each case to be rigidly adhered to.

(1) *Baptism.* Priests were enjoined to teach the people frequently the 'form' of baptism, that is, the words, 'I baptise thee in the name of the Father, and of the Son, and of the Holy Ghost, Amen,' so that they might be able to perform the duty of baptising infants in case of necessity. The form might be said either in English (*Anglico ydiomate*) or in Latin.[3] It is strange that the use of Gaelic is not mentioned. The statutes from which this order is derived were promulgated at Aberdeen; but even in that diocese there must have been places where Gaelic was the vernacular.

Out of reverence for the sacrament, the water in which a child was baptised by a lay person was to be thrown into the fire or else taken to the church, and there poured into the font. Similarly the vessel used was either to be burned or taken to the church for the church's use.[4]

The priest was careful to inquire, in the case of baptisms by laymen, what words were used; and if he was doubtful whether the proper 'form' had been employed he was to administer baptism conditionally in this manner, 'N. If thou hast been baptised, I do not baptise thee; but if thou hast not been baptised, I baptise thee in the name, etc.'

The number and sex of the sponsors, and the subject of the chrism-clothes are noticed elsewhere.[5]

(2) *Confirmation.* When the parish priest heard of the coming of the bishop, he was to warn his parishioners to

[1] *S.E.S.* ii. 10. [2] *Ibid.* 51. [3] *Ibid.* ii. 30.
[4] *Ibid.* [5] pp. 261, 263.

bring the children to the bishop to be confirmed. If the candidate for confirmation were grown up he was, if time permitted, to make his confession before being confirmed. A male should act as sponsor for a male at confirmation and a female for a female.

The laity were to be admonished that spiritual relationship (an impediment to matrimony) was created by the sacrament of confirmation as well as by the sacrament of baptism.[1] This impediment to matrimony is noticed elsewhere (see pp. 261-2).

The age at which confirmation was to be administered is not stated, but doubtless it was, as in England, as soon after baptism as the visit of the bishop would allow.[2]

(3) *Penance.* Every parishioner, who had reached years of discretion, was bound to make confession to his own parish-priest, or to a priest licensed by him, at least once a year at the beginning of Lent. After 'a fall' he was to make confession as speedily as possible. Women big with child were to go to the church at the beginning of the ninth month, make their confession, and receive the Communion 'otherwise the priest will not go to her.'[3] Priests were to hear confessions where he and the penitent might be seen, but not overheard. As is well known, confessional-boxes were unknown in Scotland or England during the medieval period. Sensible directions are given to the priest as to his manner in hearing confessions, and he is cautioned to avoid questions which might suggest unthought-of sins to the more innocent.[4] In cases where he is in doubt as to whether he ought to give absolution, he is to consult the bishop, or 'discreet man,' by whose advice he is to 'bind or loose.'[5]

(4) *The Eucharist.* Omitting some interesting ritual details as to the celebration of the Mass, we may notice that the words of the Canon of the Mass were to be said

[1] *S.E.S.* ii. 31.

[2] See Maskell's *Monumenta Ritualia*, i. pp. cclv-cclviii.

[3] *S.E.S.* ii. 45.

[4] The language of these directions is almost word for word that of the constitutions of St. Edmund of Canterbury (1236). *W.C.* i. 637.

[5] *S.E.S.* ii. 32.

rotunde et distincte, and that priests were forbidden to celebrate more than once each day unless at Christmas and Easter, or when a corpse about to be buried was present in the church, or when there was some plainly urgent necessity.

Every lay person who had come to years of discretion was to receive the Communion at Easter, unless by direction of his own priest he abstained for a reasonable cause. The injunction of the yearly communion was enforced under the penalty of the person being forbidden entrance to the Church while living, and denied Christian burial, when dead.

The Eucharist was reserved; and what remained of the reserved hosts (not used in communicating the sick) was to be consumed, when, on the Sunday, fresh hosts were consecrated.

The reserved host was to be taken, when required, to the sick. It was to be borne in a pyx by the priest vested in his surplice, and preceded by a bell and a light, unless the sick man lived at too great a distance, or the weather was bad.[1] In such cases no doubt the priest did not neglect to communicate the sick, but the usual ceremonial procession was dispensed with, and the priest would travel on horseback to distant places. The priest was to carry a silver or pewter (*stanneum*) vessel, from which he was to give to the sick the ablutions of his (the priest's) fingers after he had been communicated.[2] The Eucharist was not to be taken to the sick at night unless in the case of sudden illness.[3]

(5) *Extreme Unction.*—The 'oil of the sick' was to be borne with reverence to the sick, who was to be anointed free of charge as in the case of the other sacraments. This sacrament might be administered as often as there was need; and if the sick person recovered he was to be instructed that he was not forbidden *opus conjugale*. The latter direction was given because of a superstition current in England and Scotland that to live as husband

[1] ii. 34.

[2] *Ibid.* The language seems to be taken from the constitutions of St. Edmund (1236). *W.C.* i. 638.

[3] *S.E.S.* ii. 45.

and wife was a sin after the last unction had been received.[1]

(6) *Matrimony.*—The statutes bearing on this subject are noticed in the chapter on the medieval marriage-law of Scotland.

(7) *Orders.*—The Scottish statutes which have come down to us contain little under this head. The bishop is forbidden to ordain clerks from another diocese without the consent of the bishop of the other diocese.[2]

III. *The Burial of the Dead, etc.*—A thirteenth century statute forbids the unseemly practice of singing and dancing at the funeral rites of lay persons, 'since it is indecent to indulge in laughter when others weep.'[3] This perhaps refers to the gaieties of the 'wake,' which are still discouraged, with too little effect, by Roman Catholic priests in Ireland.

The funeral dues, mortuaries, or corse-presents, are noticed elsewhere.[4] The *tricennale*, or sum paid for saying thirty masses for the deceased, was to be divided between the parson (or rector) and the chaplain; and the same rule was to hold in regard to the *anniversary*. Heirs were bound to pay the dues of the Church if the deceased died insolvent.[5]

IV. *Holy-days in Relation to Labour.*—We possess an enactment of a provincial synod, assigned by Joseph Robertson to the fifteenth century, enjoining a cessation from all servile labour on certain holy-days and declaring that the days specified were to be the only days to be so observed. Beside the Sundays they, when counted, reach the number of 45.[6] Even allowing for the fact that every year several of these holy-days would coincide with Sundays, it is obvious that the cessation from labour

[1] This curious notion seems to have long persisted in England. It is referred to and condemned by Ælfric (Thorpe, ii. 179), and we find Walter de Cantelupe in his Worcester statutes (1240) saying, 'Sunt autem quidam, ut audivimus, qui post perceptionem hujusmodi sacramenti (*i.e.* unctionis extremae), sanitati pristinae restituti, nefas reputant vel *uxores suas cognoscere*, vel carnes comedere, vel etiam aliqua ratione nudis pedibus ambulare. Horum autem errorem, utpote doctrinae sanae contrarium, execramur,' etc. Wilkins' *Concil.* i. 669. See also pp. 595, 660, etc.

[2] *S.E.S.* ii. 14. [3] ii. 40. [4] pp. 186-190. [5] *S.E.S.* ii. 40. [6] *S.E.S.* ii. 74.

on so many days must have made a considerable inroad upon the industries of the country. The State fell in with the Church in its enactments on the subject of holy-days. For the better observance of Whitsunday and Martinmas it was enacted by Parliament in 1469 that the removal and entry of tenants, and poindings for rent should be deferred to the third day after these festivals. By the same act it was enjoined that no fairs be held on holy-days, but that they be deferred to their morrow.[1] But it was found necessary to restrain the desire of working men to further extend the holy-days enjoined by the Church; and the same Parliament passed an act declaring that as the holy-day extended only 'from even-song to even-song,' masons, wrights, and other craftsmen should work on Saturdays and other festival eves till four hours after noon under pain of losing the week's fee, and that they keep no more festivals than the great solemn festivals prescribed by the Church; and that if any does the contrary, 'the ordinary lead process of cursing against them.'[2]

In 1503 Parliament passed an act that fairs and markets were not to be held on holy-days, nor, on any day, 'within kirkes and kirkyardes,' under the pain of escheating of the goods.[3] Sentiment had changed much since the earlier part of our period. A charter of King William fixed Sunday as the market-day in a grant to the Bishops and Keledei of Brechin.[4] It was not till 1466 that the market-day was changed to Monday by James III.[5]

It will be remembered that St. Margaret, wife of Malcolm Ceanmor, in her discussions with the native clergy, had argued against the prevalent disregard of the Lord's Day. Yet it does not seem that she aimed at more than the cessation of the more exhausting and arduous forms of labour.[6]

[1] *Act. Parl.* ii. 95.

[2] *Ibid.* p. 97. The notion of Parliament enacting that the bishop should excommunicate those who would not work on working days is rather foreign to our ideas of the independence of the Church.

[3] *Act. Parl.* ii. 245. [4] *Reg. Brech.* i. 3. [5] *Ibid.* ii. 108.

[6] 'Ut nec onera quaelibet his diebus quisquam portare, nec alius alium ad hoc auderet compellere,' *Vita S. Margaretae*, § 16.

V. *Disciplinary Regulations relating to the Clergy.*

(1) Obedience to the lawful and canonical commands of bishops, archdeacons, and deans of Christianity was enforced by suspension from office, and in the case of continued contumacy by heavier penalties.

(2) The clergy were to wear dress sufficiently long, and not of green, red, or striped (*virgatis*) cloth. The injunction against striped clothing is frequent in ecclesiastical canons in other parts of Europe, and therefore must not be supposed, as some have imagined, to have been specially directed against the use of the Scottish tartan. Vicars and priests were to wear over their other clothing a closed cloak (*cappam clausam*). The tonsure was to be apparent. These injunctions were to be enforced under the penalty of suspension from office.[1]

(3) The clergy were not to be of drunken habits, or to visit taverns unless when compelled by necessity, as when making a journey. They were not to play at dice.

(4) They were not to engage in commerce, or to lend money at interest.

(5) They were bound to say the 'divine office,' that is the service of the breviary, for the night as well as the day hours.[2]

(6) Incontinence is forbidden by numerous statutes; and common concubinage of the clergy is dealt with elsewhere. They are forbidden to frequent nunneries without reasonable cause. No woman was to be kept in the manse as to whom there could be any suspicion.[3] The temptations afforded by the confessional are noticed. A bishop or priest who sins with a woman whose confessions he has heard should be punished as if he had sinned with his 'spiritual daughter,' *i.e.* one whom he had baptised or confirmed. The bishop should do penance for fifteen years, the priest for twelve. And, if the scandal comes to the knowledge of the people, he is to be deposed.[4]

VI. *Tithes.*—The statutes on this subject are noticed elsewhere.

VII. *Resistance on the part of the Laity to Ecclesiastical Discipline.*

[1] *S.E.S.* ii. 12, 13, 35. [2] ii. 35. [3] ii. 51. [4] ii. 28-29.

(1) Pressure put upon the clergy, by the feudal superior of persons who were suffering from the sentence of excommunication or interdict, to have the sentence relaxed, was to be sternly resisted. If the pressure went the length of interfering with the goods of the Church, movable or immovable, the bishop should punish the delinquent.[1]

(2) If any person was excommunicated by one bishop any of the other bishops was bound, if requested, to proclaim him excommunicate. The places through which the excommunicated person passed should, so long as he tarried there, be put under interdict. An exception, however, was made in the case of the excommunicated person being in attendance on the king or the queen or at Parliament.[2] In 1280 we find the Bishop of Moray in the provincial council held at Perth calling on the bishops throughout Scotland to publish in their several dioceses sentences of suspension, excommunication, and interdict, passed on Sir William de Fenton, lord of Beauford in the Aird, by papal judges delegate in a dispute with the bishop about land belonging to one of the parish churches.[3]

(3) From a thirteenth century statute we learn that the Church suffered much from the common practice of the nobility demanding hospitality for themselves and their retinue in their journeys for business or amusement. Not only the monasteries, but even the manses of the parochial clergy, were often thus invaded by the magnates, with their horses, hawks, and hounds. Any layman so offending after the promulgation of this statute, no matter what his dignity or office, unless specially invited (the king or his children excepted in cases where they were the patrons of the places and had a right to hospitality), should be subjected to the greater excommunication with bell and candle. Any ecclesiastic who had suffered in the way described was bound to inform the bishop, the archdeacon, or their officials within one month under pain of suspension. The delinquent layman should not be released from his sentence by any but the conservator of the council of the Scottish Church.[4]

[1] *S.E.S.* ii. 29. [2] ii. 27-28. [3] *Reg. Moray.* 140-142. [4] ii. 49-50.

These notices of ecclesiastical legislation must be regarded only as specimens. Many other interesting particulars of various kinds will be found by the student.[1]

[1] It may be permitted to notice the curious statute which appears more than once—that mothers and nurses should be warned 'every Sunday' against having infant children to sleep in bed with them, lest they might be overlain. The injunction is not peculiar to Scotland, as we find it in more than one collection of English statutes. The danger still exists, and the enactment is referred to here as showing the beneficent interest of the Church in the domestic life of the people. In Sir Henry Littlejohn's *Report* (p. 18), as Medical Officer of Health, for the year 1902, we read that no less than 21 infants were in that year suffocated by being overlain in the city of Edinburgh. Mothers were also to be warned by the parish priest of the dangers of leaving young children in places where they might be burned or fall into water.

CHAPTER XVI

THE MARRIAGE LAW OF MEDIEVAL SCOTLAND

The law of the Church in regard to matrimony was naturally the outcome of the doctrine of the theologians. According to the medieval theologians matrimony is the bond uniting a man and a woman who have given themselves wholly to one another, under pledge of lifelong fidelity. Matrimony was regarded as a sacrament; and according to the most distinguished medieval divines the *ministers* of the sacrament were the parties themselves. The presence of a priest was not necessary to the essence of marriage. That a marriage should be *regular*, that is, in accordance with the rules of the Church, a priest should be present at the mutual giving of the promises of future marriage, the espousals, or, as it was technically styled, the contract, or spousals, *per verba de futuro*. It was also dutiful that the marriage proper, the contract *per verba de presenti*, should take place in the presence of the priest, and that the contract should have the Church's benediction. But the marriage was reckoned as perfectly *valid*, though not *regular*, if the contract *per verba de presenti* was made between any man and woman who were not suffering from any canonical impediment. A marriage might be clandestine, and irregular in other ways, but yet perfectly *valid*. In the view of the Church no priest needed to be present, and if a contract of marriage was made, and the marriage was consummated (*carnali copula*), the marriage was in its essence complete, and was indissoluble.

There is not the slightest historical evidence for

supposing that either England or Scotland in the medieval period differed from the rest of western Christendom in regard to what the Church believed as to the essentials of a valid marriage. It is an entirely different question how far the civil law concurred with or differed from the law of the Church, more particularly with respect to the retrospective effect of marriage on the rights of inheritance of children born before wedlock.

The marriage law of Scotland of to-day, which ignorant people suppose to be due to the laxity of morals consequent on the great religious changes in the sixteenth century, is really the survival (in regard to what are known as irregular marriages) of the doctrine and practice of the medieval Church.

To deal with the vexed question whether in the medieval period a promise of marriage (*per verba de futuro*), followed by *copula*, was regarded as constituting true matrimony *in all respects* would occupy more space than can be here afforded to it. The question has been treated with much learning by Lord Fraser in his *Treatise on Husband and Wife according to the Law of Scotland* (chapter vii.). Two points at least are certain; first, a promise of marriage followed by *copula* constituted a relationship not dissolvable at the will of either party, nor by the mutual consent of both parties; secondly, the relationship thus created formed a ground for the declaration of the nullity of a subsequent marriage of one of the parties to a third party, though it were solemnised in the face of the Church.[1]

It is certainly very remarkable, and speaks much for the penetrating intelligence of the great medieval theologians, that in an age when there was every temptation to exalt the importance of the priesthood, and when in truth sacerdotal pretensions obtruded themselves into almost every province of human action, there was substantial unanimity on the doctrine that the intervention

[1] It will be noted in the case of the divorce of Duke of Albany and Lady Catherine Sinclair in 1477 (see p. 294) that nullity is pronounced, not because the connexion of the duke and the lady had been created by only a promise and *copula*, but because the parties were within the forbidden degrees of kin.

of a priest was not essential to the validity of the sacrament of matrimony.

The medieval Church in Scotland, as elsewhere, was painfully aware of the evils that were consequent on clandestine unions, and the temptations to which the young were thus exposed. Many ecclesiastical enactments were promulgated enjoining that espousals (*sponsalia*), or what we should now call 'the engagement,' should not be secret, and that banns of marriage should be proclaimed, and marriages celebrated in public. But, nevertheless, it held fast by the doctrine already stated as to the essentials of matrimony. Without a clear apprehension of this fact the proceedings of the consistorial courts, and the purport of many papal dispensations will be wholly unintelligible.

The desire of the Church to secure publicity to a contract of such signal importance in the life of anyone is sufficiently indicated by the following statutes of the Scottish synods of the thirteenth century.

(1) 'Since matrimony is known to have been instituted in Paradise by God Himself, and is, as regards its origin, the first among the Sacraments, to the end that for the future it may be freely and canonically contracted, we ordain that a pledge of intended matrimony (*fides de matrimonio contrahendo*) is not to be made except in the presence of the priest and three or four male persons (*viris*), who are worthy of credit and have been specially called together for the purpose.'

(2) 'Let no priest presume to join together any persons in matrimony unless after proclamation made three times publicly and solemnly in church, according to the form prescribed by the general council, so that he who wishes and is able (*voluerit et valuerit*) may object a lawful impediment.'[1]

The fourth Lateran council (can. 51) enacted that 'the special custom of certain places' should be made general, so that when matrimony was about to be

[1] *S.E.S.* ii. 36-37. Yet it would seem that at least in the second half of the fourteenth century banns were often neglected. A papal letter of Gregory XI. speaks of marriage without banns as a custom in those parts [Scotland], *Cal. Pap. Reg.* iv. 195.

contracted proclamation of the intended matrimony should be made publicly in church by the priest to the end that within a suitable time (which should be announced) he, *qui voluerit et valuerit*, might declare a lawful impediment. The triple proclamation is not ordered, nor is the language in which the proclamation is to be made prescribed by the general council. From this it appears that the word 'form' in the Scottish statute must be understood, not of the exact terms of the proclamation, but, of (*a*) publication, (*b*) in the church, (*c*) by the priest, with (*d*) a prescribed limit of time within which objection might be taken.[1]

(3) 'Let priests forbid, under pain of excommunication, anyone concealing out of malice impediments to matrimony, or out of malice raising impediments.'

(4) 'Nevertheless the priest himself shall also make inquiry whether any impediment presents an obstacle; and when there appears a probable ground against contracting the union, let the contract be expressly interdicted until what ought to be done in the matter is made evident by manifest proofs.'[2]

(5) 'We also prohibit clandestine marriages, and forbid any priest presuming to be present at such. And let him, who does so contrary to this ordinance, be punished according to the canon.'

The next provision will be made intelligible when we come to speak of the prohibited degrees.

(6) 'Let the priest declare to his parishioners that matrimony is forbidden within the fourth degree of consanguinity or affinity. Beyond the fourth degree it is lawfully contracted.'

This statute would seem to have been enacted while the old rule, which was in force up to the Lateran council (1215), was still in men's memories. Up to 1215 marriages were forbidden within the seventh degree. An impediment on this, or any other lawful ground, might be alleged at the time of the ceremony of marriage to stay proceeding. We have an instance of the objection of

[1] See Mansi, tom. xxii. col. 1038.

[2] *S.E.S.* ii. p. 37. This is taken substantially from canon 51 of the fourth Lateran council.

the parties being 'within the third and fourth or fourth and fourth degrees of consanguinity' alleged at the wedding of Sir Patrick Hepburn in 1510; and an answer being given by the production of a dispensation from Alexander [Stewart], Archbishop of St. Andrews.[1]

The next provision deals with the impediments to marriage which were regarded as arising out of spiritual relationship. These will be considered later on.

A fuller statement with respect to the publication of banns will be found in a subsequent statute of the same collection. It is entitled (7) 'That matrimony is not to be contracted without banns,' and runs as follows: 'Likewise we forbid any contracting matrimony without proclamation made three times solemnly in the church of the parish where they live, if they both live in the same parish. If they live in different parishes, let the espousals (*sponsalia*) be proclaimed in each parish church. And let them not be contracted without trustworthy and lawful witnesses.'[2]

As there is good reason for believing that the form of marriage in Scotland, when celebrated 'in the face of the Church' (which, it may be observed, is explained by Lyndwood as meaning, not merely in the presence of the priest, but publicly in the church), followed the rite of Sarum, it may be of interest to give the form of the letter prescribed by the Sarum Manual to be sent by the priest of one parish to the priest of another parish when the parties were not residing in the same parish. 'We do you to wit that our parishioner Richard N. is not in our registers under any sentence of excommunication. Nor do we know of any canonical impediment on account of which the sacraments of the Church should be denied him, or even postponed. Moreover, in our said parish church, we have publicly and solemnly proclaimed, or caused to be proclaimed, on three Sundays, or solemn festivals, the three banns (*tria banna*) for the solemnisation of intended matrimony between him and Margaret N. To these banns no opposition or contradiction was made. We beseech therefore your discretion[3] to couple together

[1] *Laing Charters*, No. 278. [2] *S.E.S.* ii. p. 42.
[3] 'Titulus honorarius.' See Ducange, *s.v.*

in matrimony our parishioner Richard N. with Margaret N. your parishioner, *per verba de presenti*, in your church, unless on your side there may be some impediment which stands in the way. And by the tenor of these presents we certify these things to all who are, or, in the future, may be concerned. Given under the seal of our church aforesaid, on the —— day of —— month of the year ——.'[1]

(8) 'Matrimony is by no means to be contracted between persons unknown, nor between known persons unless it has been preceded by a threefold solemn proclamation, both of the man and the woman on three Sundays.'[2]

In what seems to be a later collection of Scottish statutes preserved in a manuscript in the Library of Lambeth Palace, and assigned by Joseph Robertson to the fourteenth century, we find the following:

(9) 'We enact that those who desire to contract espousals, whether *per verba de presenti* or *per verba de futuro*, shall contract them in presence of a priest and of trustworthy witnesses; and we add the injunction that on the next Sundays and festivals the banns shall be proclaimed after the manner of the Church. The nuptial benediction shall follow as speedily as may be, and it should be given, not in private chapels, nor at night (*in tenebris*), but solemnly and openly in their parish churches.'[3]

The same collection of Scottish statutes enacts:

(10) 'That those who contract betrothals of this kind [that is, without witnesses] shall be subjected to canonical punishment, as though they were fornicators.' It will be observed that the statute does not assert that those who thus disregarded the rule of the Church were fornicators, but that canonical penance inflicted on fornicators should also be inflicted on them. Such marriages and espousals were irregular and liable to canonical penalties; but they were not invalid.

So that the promise of marriage was distinct and unambiguous, the Church does not seem to have been

[1] The original will be found (taken from the Sarum Manual) in Maskell's *Monumenta Ritualia*, vol. i. p. cclxvi.

[2] *S.E.S.* ii. p. 58. [3] *S.E.S.* ii. p. 68.

scrupulous as to its exact form; but we happen to have preserved in the *Liber Officialis S. Andree* (p. 21) an example of a form in the vernacular, which had been actually used. One David Johnson had given his promise of marriage in the following words: 'I promytt to zow Begis Abirnethy that I sall mary zow, and that I sall nevere haiff ane uther wiff, and therto I giff zow my fayth.' This was at the private espousals; but being in this case followed by cohabitation it was reckoned a valid marriage, causing sentence of divorce of the man from a subsequent marriage duly solemnised four years later.

The Impediments to Matrimony from the Prohibited Degrees of Consanguinity and Affinity.

During the period with which we are concerned we have two distinct epochs. The first extends to the year 1215, when the fourth Lateran council made an alteration in the marriage laws of the Church; the second extends from 1215 to the Reformation. By the time of Queen Margaret the rule had come to be well established that no persons related to one another by consanguinity up to and including the seventh degree could lawfully marry.[1] The fourth Lateran council restricted the prohibition to the fourth degree, whether of consanguinity or affinity.

It is necessary to say a few words to explain what is meant by a degree, and how degrees were computed according to the principles of the canon law. Consanguinity is the relationship created by descent from a common parentage. A son or a daughter was said to be related to his or her father in the first degree; a grandson, or granddaughter, in the second degree, and so forth. In the direct ascending or descending line no difficulty arises; and so far the same mode of computation was followed by the civilians and the canonists. It is different, however, when we have to deal with relationships in the transverse or collateral lines. Let us ask, for instance, in what

[1] The prohibitions extending to the seventh degree were fully established in England, if not earlier, certainly by 1075, when we find the rule laid down in the *Constitutions* of Archbishop Lanfranc. See Wilkins' *Concilia*, i. 363.

degree of consanguinity are first-cousins related to one another? In answer the canonists simply counted the steps (*gradus*) between the persons and the common ancestor. First-cousins have a common ancestor in their grandfather, and, as there are only two steps between a grandchild and a grandfather, according to the canonists first-cousins were related to one another in the second degree. Similarly, second-cousins were related to one another in the third degree, and third-cousins in the fourth degree.

Let us suppose, again, that the grandson of a man desired to marry the great-granddaughter of the same ancestor, in the collateral lines. According to the rule of the canonists the steps, or degrees, between the most remote from the common ancestor were counted, and the parties were said to be related to one another in the third degree. When precision was sought, as in the case of sentences in the consistorial courts and petitions to the Pope for dispensations, the relationship of each of the parties to the common ancestor is expressed.[1] Thus in the divorce case brought by James Stirling (son of Sir John Stirling, of Keir) against Janet Stirling (daughter and heiress of Andrew Stirling, of Cadder), in the year 1541, the marriage, which had been celebrated in the face of the Church, was declared dissolved and the parties divorced, because James and Janet were related to one another in the fourth and fourth degree of consanguinity.'[2] They were in other words third-cousins, each being each a great-great-grandchild of a common ancestor. Again, Sibilla Haitly obtained a divorce from Gilbert Ormiston (the marriage having been solemnised in the face of the Church) in the consistorial court of the official of Lothian on the ground that Sibilla and Gilbert were related in the third and fourth degree of consanguinity. In other words

[1] We find Wyntoun in the course of his narrative describing the relationship of Henry II. of England and Malcolm IV. thus:

'For off consangwnyte
The thryd and thryd thai ware in gre.'

The word 'gre' is for 'degree' (*gradus*). Both were great-grandsons of Malcolm Canmore and Margaret. *Cronykil*, B. vii. c. 7.

[2] *Lib. Off. S. Andr.* p. 68.

Sibilla was a great-granddaughter and Gilbert was a great-great-grandson of the same common ancestor. And numerous other examples may be found in the *Liber Officialis S. Andree*. But it was obviously sufficient to state the relationship of the most remote from the common ancestor. Yet we find examples where doubts were raised in a case of a dispensation when the degrees of both the parties were not accurately given.[1] And it was customary to give full information.

The mode of counting the degrees of consanguinity in the transverse or collateral line, as adopted by the civil law, was different. The number of degrees from the common ancestor on one side was added to the number of similar degrees on the other. Thus, first-cousins were said to be related to one another in the fourth degree; second-cousins, in the sixth degree; while a first-cousin was related to a first-cousin once removed in the fifth degree, and so forth. But in ecclesiastical records, unless the contrary is distinctly stated, the computation of degrees is always in accordance with the method of the canon Law.

'Affinity' was another impediment. 'Affinity' is a term used to express the relationship of a third party arising out of the corporal connexion between a man and a woman. It was created equally, according to the canonists (though not according to the civilians), whether the connexion was illicit or not. The principle on which the canonists argued was that the man and the woman become 'one flesh,' and that therefore the man is related to each of the members of the woman's family in the same degree as she herself is related to each of them. The same was true of the woman in regard to the family of the man. Thus the woman's third-cousin was regarded as being the man's third-cousin; and between the man and the woman's third-cousin marriage was therefore prohibited. During the medieval period in a country like Scotland, which certainly, to say the least, was not eminent for the chastity of either sex, the doctrine of the canon law gave a wide extent to the opportunities for divorce. And the records of the consistorial courts show how largely, as a matter of fact, such opportunities were taken

[1] See *Laing Charters*, No. 663.

advantage of. The divorces on the ground of affinity were granted sometimes in cases of second marriages, when, wittingly or unwittingly, a man had gone through the ceremony of marriage with a second wife who was related to his first wife within the prohibited degrees of consanguinity, but more frequently in cases when an act of pre-nuptial unchastity on the part of the man or the woman had involved, as his or her partner in guilt, some one related within the prohibited degrees of consanguinity to the bride or the bridegroom.[1]

An example may be cited from the consistory court of Galloway, sitting at Kirkcudbright, in 1522. Gavin Kennedy of Blairquhan, knight, sought (1520) a decree of nullity of his pretended marriage with Elena Campbell, on the ground that long before he had had intercourse with a certain Cristina Ferguson related to Elena in the fourth and fourth degree.[2]

Impediments to Matrimony arising from Spiritual Relationship.

Beside the impediments to matrimony arising from the relationships of consanguinity and affinity, impediments were created by what is known as spiritual relationship (*cognatio spiritualis*). To discuss at length the questions arising from the doctrine of the medieval Church on this subject would be out of place. It will be enough to explain, in a simple way, what is meant, so that the language of medieval records may be understood. Spiritual relationship arises from the giving or receiving of certain of the sacraments. For example, the person who administers the sacrament of baptism is forbidden to marry the person baptised ; nor is the child of the baptiser permitted to marry the baptised. As a layman, or a woman, was

[1] The judicial pronouncements of the judge of the consistorial court seldom enable us to identify, at this distance of time, the parties in the suits. But occasionally historic figures come before us. Thus the misconduct of William, Earl of Montrose, 'qui decessit apud Flowdoune in anno Domini M.D.XIII.,' was declared to have made null the subsequent marriage of the lady with Ninian Seytone of Tulybody, who was related to the earl in the third and fourth degrees of consanguinity (*Lib. Off. S. Andr.* p. 8).

[2] *Laing Charters*, No. 339.

strictly enjoined to baptise in cases of pressing emergency, this prohibition would often come to be practically effective. And the *Manipulus Curatorum*, a manual in widespread use among the clergy, does not scruple to refer also to a class sufficiently numerous in the middle ages, the sons and daughters of priests, as affected by this prohibition.

Next, we have to consider the impediment created by sponsorship (*compaternitas et commaternitas*). A god-father could not marry his god-child, and what was more likely to be a prohibition of frequent practical effect, the baptised could not marry the child of the god-father. Nor was it lawful for the god-father to marry the natural mother of his god-child. What is said of the god-father is true, *mutatis mutandis*, of the god-mother. And now attention must be directed to the operation of the principle which lay at the foundation of the prohibitions arising out of affinity, the principle, namely, that a man and his wife being 'one flesh,' the acts of one of the married couple are in the eye of the Church the acts of the other. Hence the Pope's negative answer to the question arising out of the following case submitted. 'Martin married Bertha, and Leonard married Bridget. After Leonard's marriage he became god-father to a child of Martin and Bertha. Leonard dies, and so does Bertha. May Martin contract marriage with Bridget?'

Beside the impediments arising out of the sacrament of baptism, impediments were also held to be created by the sacrament of confirmation. In the administration of this rite the child was presented to the bishop by a sponsor: and the same impediments were created as in the case of baptism. In the old English manual in verse edited for the Early English Text Society under the title *Instructions for Parish Priests by John Myrc* (which may be assigned to about A.D. 1400 and certainly not later than 1450) the priest is reminded that among the 'cosynes' of the baptised child whom the child may not marry are the priest that baptises, the priest's children, the god-father's children, etc.; and then turning to confirmation, adds 'the byschop, the bischopes chyldren,' etc. The bishop's children and the priest's children were common enough in Scotland before the Reformation; but an impediment more likely to

appear in fact was the prohibition of the marriage of the child confirmed with the child of his or her god-parent at confirmation.

In the scanty records of the court of the Official Principal of St. Andrews there is one case of a divorce being sought and granted on account of the spiritual relationship of the parties. In 1548 the 'pretended marriage' of David Ynglis and Marjory Forrett was declared to be null, 'because John Forrett of Fingask, father of the said Marjory, putative spouse of the said David, lifted (*levavit*) the same David from the sacred font.'[1]

Dispensations were sometimes sought from the Pope for marriages suffering from this impediment. Thus in 1320 John XXII. commands the Bishop of Winchester to grant a dispensation to Robert of Morstede to remain in the marriage which he had contracted with Agnes of Witherst in ignorance of the impediment caused by Agnes's mother having been Robert's god-mother. In the same year the Pope granted a dispensation, through the Bishop of Salisbury, to Roger of Esthamstede and Marjory West to remain in wedlock contracted in ignorance that Roger's father was Marjory's god-father.[2]

In Scotland we have a dispensation granted by a papal commissary in 1541 for the marriage of a man whose father had been god-father at baptism to the woman.[3] In 1387 we find another case—a dispensation granted by the Pope at the request of King Robert for the marriage of Robert de Benachtyn with Egidia Stuart, notwithstanding that Egidia's father was god-father to Robert.[4]

The serious inconveniences that followed from the impediments to matrimony arising from spiritual relation-

[1] *Lib. Off. S. Andr.* p. 101. In the ceremonial of public baptism one of the sponsors lifted the child from the font after baptism. Baptism was ordinarily by immersion. In Scotland this was called 'heaving.' In the *Lord Treasurer's Accounts* we have more than one instance of James IV. acting as sponsor. Thus in 1489 the king 'hwfe (*i.e.* hove) Duncan Forstaris sonnis barne' (i. 120), and in 1500 he acted at the 'heving' of the son of the Earl of Buchan (ii. 97). The 'heaving' is not, as has been erroneously stated, the holding up of the child for baptism, but the raising of him from the font.

[2] *Calendar of Papal Registers*, ii. 206, 207.

[3] *Laing Charters*, No. 457.

[4] *Cal. Pap. Reg.* iv. 255.

ship were probably the principal reason for the provision of one of the Scottish statutes which runs as follows: 'Let three persons *at most* be admitted at baptism to lift the child from the font. Two males and one female should be god-parents for a male, and two females and one male for a female. If more can be had they are to be witnesses, and not god-parents; and this rule is made for various causes.'[1]

Again, when treating of confirmation, the statute[2] enjoins, 'Let the laity be informed that in this sacrament, as in the sacrament of baptism, spiritual relationship (*proximitas spiritualis*) is contracted between the god-parents and those to whose children they act as god-parents, and also the children themselves.' To which is added, 'Let a male hold a male before the bishop, and let a female hold a female.'[3]

The belief that the spiritual relationship created between the person who administered the sacrament of baptism and the parent of the person baptised was an impediment to contracting matrimony, and dissolved matrimony that had been contracted, gave rise to a notion among the vulgar that if a father in case of necessity baptised his own child, he could no longer cohabit with the mother of the child. One of our Scottish statutes, however, is express in declaring that such was not the mind of the Church.[4]

[1] *S.E.S.* ii. 31. [2] *Ibid.*

[3] I cannot remember having come across any Scottish notice with respect to the age at which children were ordinarily confirmed. But, doubtless, it was, as in England during the middle ages, at a very early age, when a visit of the bishop made it possible. The constitutions of the diocese of Worcester (1240) fix the time as one year after birth; the synod of Exeter (1287) before the end of the third year; while the council of Durham (some time between 1217 and 1226) extended the permissible delay to the seventh year, probably on account of the infrequency of the bishop's visits in that extensive diocese. The child would be confirmed immediately after baptism if the bishop was present. The limits mentioned above had reference to the time beyond which if the parents neglected to bring the child to confirmation they would be subject to canonical punishment.

[4] *S.E.S.* ii. p. 30. 'Et pater et mater baptizent filium suum in necessitate, si alie desint persone, et sine prejudicio matrimonii.' What is meant is more clearly expressed by the council of Exeter (1287),

In medieval times, as is well known, it was not infrequent to arrange for the marriage of children, more especially of royal or noble houses, at a very early age. But the designs of their parents and friends had to have the assent of the boy and girl when they reached the age of seven. A promise of future marriage might then be given, for in the language of the theologians they 'then begin to have discretion.' But matrimony could not be contracted till the boy was fourteen and the girl was twelve years of age. Yet it was held generally that the promise of marriage if given after seven years of age required a dispensation from the Pope to set it aside.

There is preserved in Rome, and printed by Theiner (p. 284), the interesting and curious case of two children, Hugh Giffard, in his ninth year or thereby, and Elisabeth More in her eleventh year, being actually publicly married *per verba de presenti* in the face of the Church. The marriage, it appears, was only in name, and when they were a few years older, they reclaimed against this marriage and refused to regard it as valid (*gratum vel ratum*). Yet it was thought (probably in error) that the Pope should be petitioned to release the parties from the supposed bond. The Pope (1345) remits the matter to the Bishop of St. Andrews, who, if he finds that the statements made in the petition were true in fact, was to declare that matrimony of this kind was in no sense binding. The boy was of the diocese of St. Andrews and the girl of the diocese of Glasgow. There is no other clue in the document itself helping to identify the parties, who must, no doubt, have belonged to families of distinction.

This document, there is good reason to think, refers to the early history of a lady around whose story the strife of historians and antiquaries raged fiercely four hundred years after she had passed to the silence of the grave.

'Insuper pater et mater in necessitatis articulo absque copulae conjugalis prejudicio suos parvulos valeant baptizare.' See *W.C.* ii. 131. A father or mother was not allowed to be a god-parent to his or her own child; and we find Walafrid Strabo, Abbat of Reichenau, in the middle of the ninth century, maintaining that if this occurred the parents were to be thenceforth forbidden conjugal rights, 'non habebunt carnalis copulae deinceps adinvicem consortium, qui in communi filio compaternitatis spiritale vinculum susceperunt.' *De officiis divinis*, cap. 26.

She was the beautiful lady afterwards married to King Robert II. of Scotland, and the mother from whom all the subsequent kings of this country can trace their descent. There can, I believe, be scarcely a doubt that the little girl who was married in her eleventh year to Hugh Giffard is none other than Elizabeth Mure, daughter of Sir Adam Mure of Rowallan.

As it seems to me, the petition to the Pope which drew forth the rescript of 1345 was a first step with a view to the marriage of this lady with Robert, the Steward of Scotland, which Fordun tells us took place in 1349. This was only a preliminary, but yet a necessary step. The first thing was to remove all doubt as to whether Elizabeth Mure was a married woman. If she were, and Hugh Giffard[1] were still alive, no dispensation would be possible. But that question being set at rest, a fresh set of obstacles to the marriage of Robert and Elizabeth had to be faced. First, Robert and Elizabeth were related in the fourth degree of consanguinity; secondly, through a previous illicit connexion of Robert with Yzabella Boutellier, who was related to Elizabeth in the fourth and third degree of consanguinity, Robert was related to Elizabeth in the fourth and third degree of affinity. Robert and Elizabeth professed that they had been ignorant of these relationships; and now, Robert, desiring to make Elizabeth his undoubted wife, they petition the Pope for a dispensation from these canonical impediments. The petition was supported, as the Pope's response informs us, by the intreaties of King David and Philip, King of France, and farther, as we learn from the petition itself, by the Bishops of St. Andrews, Glasgow, Aberdeen, Dunkeld, Argyll, Brechin, and Dunblane. The union of Robert and Elizabeth, before their marriage, had made them parents (to use the language of the Pope's letter) of 'a multitude of each sex'; but even if there had been a promise of marriage between them, the canonical impediments of consanguinity and affinity would have

[1] This Hugh Giffard, as I take it, was Hugh Giffard, son of Sir John Giffard of Yester, whose eldest daughter was married to Sir W. Hay, from whom the noble family of Tweeddale derive their descent. See Douglas's *Peerage*, ii. 650.

sufficed to prevent their union being a marriage in the eye of the Church.[1]

It was a principle of the canon law that the children of persons who had not been married were rendered legitimate by a subsequent marriage of the parents.[2]

It was ruled that when a marriage had been publicly celebrated in the face of the Church, and when afterwards a divorce is granted in the ecclesiastical courts, the children born before the sentence of divorce is pronounced shall be regarded as legitimate.[3]

Children born of adultery are not legitimated by the subsequent marriage of the parents.[4] If a married man, his wife being still alive, publicly contracts marriage in the face of the Church with another woman, who is ignorant of the fact that his wife is alive, though the marriage with the second woman is null, the children are to be held legitimate.[5]

The ignorance of one or both of the parties in respect to canonical impediments to their matrimony is often found pleaded in the consistorial courts, and in many cases it seems to have been allowed so far forth as concerned the legitimacy of the children of the union.

As is well known, the civil law of Scotland retains many traces of the influence of the ancient canon law. The common law of England has never sanctioned legitimation by subsequent marriage. It was when the bishops of England attempted to have the canon law on this subject recognised that the earls and barons returned the famous answer at the assize of Merton (1235), 'Nolumus mutare leges Angliae.'

But what I am concerned with is the law of the Church. And, as distinct from the question of a right to inherit, it must be remembered that various ecclesiastical inabilities were entailed by illegitimacy. Illegitimate persons were prohibited from being ordained, and from receiving an

[1] See *Calendar of Papal Registers* (Petitions), i. 124, and Theiner's *Monumenta*, No. 565.

[2] See *Decret. Greg. IX.*, lib. iv. tit. xvii. 1. Naturalis ex soluto genitus et soluta legitimatur per subsequens parentum conjugium, *etiam quoad hereditatem.*

[3] *Ibid.* 2. [4] *Ibid.* 6. [5] *Ibid.* 14.

ecclesiastical benefice, unless they received a dispensation. And, what affected a much larger number, they were unable to make a will.

Dispensations.

A dispensation is the relaxation of a general law in a particular case. The medieval theologians generally distinguished between laws, natural and divine, on the one hand, and on the other, laws ecclesiastical. The majority were of opinion that even the Pope himself could not dispense from the obligation of natural divine law. The impediments to matrimony, arising out of those of the prohibited degrees which do not appear in the Levitical code, were admitted by all not to be of divine obligation. They were ecclesiastical restrictions supposed to be beneficial to the social and religious life of Christians. The Church, which had enacted them, could revoke them, as was done in respect to the fifth, sixth, and seventh degrees of consanguinity and affinity at the fourth Lateran council. And it was held that the Pope could relax the application of the general law, at least in regard to any of the non-Levitical prohibitions, if it seemed to him that there was good cause for such action. It will be observed in several cases of the dispensations which are cited later on, that some public good, such as the uniting of families between whom strife and rancorous animosity had prevailed, or the bringing about of peace between two nations that had been at war, is expressly mentioned as a reason for the relaxation of the Church's law. In a small country like Scotland, where the intermarriages between the great houses were frequent, and practically of necessity, there was evidently much readiness in granting dispensations.

The theory of such dispensations was that the union of two persons related within certain of the prohibited degrees was not in it itself sinful, but would be sinful as violating a disciplinary rule of the Church. This rule, for a good reason, the Church might relax in a particular case. A good example of a statement of the reasons for a dispensation will be found in the case of the marriage of

William, Earl of Sutherland, with Margaret, sister of King David II. The commission to the Bishop of Caithness to inquire into the truth of the petition for a dispensation is dated Dec. 1, 1342. It was represented to the Pope that between the families of the Earl and Margaret, their forbears and friends, there had long been dissensions, wars, plunderings, fire, and slaughter, which, with other evils, were still continued. The churches had suffered great loss, and greater damage was expected unless some remedy could be found. This remedy it was alleged lay in the marriage of William and Margaret. They were indeed in the fourth degree of consanguinity from the common ancestor (*ab eodem stipite*), but the Pope for the reasons stated was willing, if the Bishop of Caithness found that the account contained in the petition was correct, to allow matrimony to be contracted, the obstacle of consanguinity notwithstanding.[1]

This case may be taken as a specimen of a large number of marriage dispensations recorded in Theiner's volume.[2]

But all young people were not so fortunate as to belong to great families that were at feud and had carried fire and slaughter into one another's territories. And occasionally we find the Pope giving as his reason for the dispensation that he desires to foster and preserve the great friendship that had long existed between two families.[3] In some cases the Pope does not state the reasons for the dispensation, but contents himself with declaring that it is given for certain causes which had been explained to him.[4]

[1] Theiner p. 278.

[2] As in the cases of Patrick of Dunbar, Earl of March, and Agnes, daughter of Thomas Arnulph [Ranulph, Randolph], Earl of Moray, in the third and fourth degrees of consanguinity (A.D. 1324; No. cccclii.); John Stewart and Fynghola, daughter of Angus of the Isles, in the fourth degree of consanguinity and also fourth of affinity (A.D. 1342; No. dliii.); William de Moravia and Muriel, daughter of Sir Duncan Campbell, in fourth degree of affinity (A.D. 1343; No. dlvii.); Robert Stewart and Eufemia, widow of John, Earl of Moray, in the fourth degree of consanguinity and third of affinity (A.D. 1354; No. dcxx.); to which many others could be added, as Nos. dcxxvi., dcxxxii., dcxl., dcxliii., dcc. In all these the reason assigned is to mitigate, or put an end to rancours and strife, or wars and slaughter.

[3] See Theiner, Nos. dclxxiii. and dccxxiv. [4] Theiner, No. dcxlvii.

In truth, nothing is more certain than that dispensations could be easily had by those who were able to apply for them and pay. Even those who married, *knowing* that they were within the forbidden degrees, had no difficulty; and the salutary penance for their offence was trifling. Such a case was the marriage of Alexander Lord Hume with Agnes Stewart, widow of the Earl of Bothwell, who fell at Flodden. They were dispensed to remain in marriage, and, as a penance for their offence, they were to separate for three days, hear mass, and say five *pater nosters* and five *aves*.[1]

The great difficulty of finding a spouse that was not within the forbidden degrees is sometimes dwelt on in the petition, as when Sir David Graham and Helen, widow of Sir Reginald Chene (1353), who were within the fourth degree of consanguinity, pleaded that on account of the scarcity of people of rank in those parts, and because of the very large families of blood relations (*fecundissimam prolis propagationem*) it was scarcely possible to find persons whom they could lawfully marry.[2] Two hundred years later things were as bad or worse. In 1556, Mary of Guise, the queen-mother, addressed a letter to Pope Paul IV., in which she declares that in Scotland 'every day many illicit marriages are contracted between cousins (*inter consanguineos*) and in the forbidden degrees, while partly on account of the great distance and the perils of the journey, and partly on account of poverty, they are unable to resort to the Most Holy See to seek the benefit of dispensation.'[3] Indeed, apart from any discussion of the lawfulness of the Church imposing restrictions on marriage which were, on all hands, acknowledged to be not of divine law, the ugly feature of the system of dispensations was that they were not to be had by the poor, however deserving they might be of such indulgence. The remedy suggested by the queen-mother and her advisers was that the powers already granted to the Archbishop of St. Andrews should be extended, and that the Pope should grant him authority to dispense with all

[1] *Laing Charters*, Nos. 301, 302. [2] Theiner, *Monumenta*, p. 305.

[3] The letter is printed in full in the Appendix to the Preface to *Liber Officialis S. Andree*, p. xli.

impediments arising from spiritual relationship, and all those arising from natural consanguinity and affinity up to and including the third degree. Someone on the spot, someone who could be resorted to without considerable expense, was desired.

Some of Archbishop Hamilton's predecessors had certainly enjoyed large dispensing powers. Not to speak of Cardinal Beaton, Andrew Forman had 'the power and faculty of a legate *de latere* throughout the whole kingdom.'[1] In 1534, Cardinal Antonius, the papal penitentiary at Rome, granted a limited commission to John Chesholme, Chancellor of Dunblane, to grant dispensations to twenty couples. The power was to terminate after five years. In two years the nineteenth couple had been reached.[2] A later commission from the penitentiary more than doubles the number capable of being dispensed, but, as will be seen, it was obviously insufficient for the needs of the country.

In 1541, a commission, of a limited nature, was granted by the Pope's penitentiary, Cardinal Antonius, by special command of the Pope, to John Thornton, Canon of Glasgow, who was also Precentor of Moray, to grant dispensations to forty-five couples, forty-five men and forty-five women, suffering from the impediment of the fourth degree of consanguinity or affinity, or from one of the impediments arising from spiritual relationship, namely, that created between a god-child and the natural children of a god-parent either at baptism or confirmation. The commission was to last for only five years, and, as has been said, was limited to forty-five couples. The commission was granted at Rome on 4th June, 1541; and on 1st May, 1542, or in less than eleven months, the commissioner's powers were approaching exhaustion, for on the latter day his thirty-ninth dispensation was granted.[3] In the same year (1541), a few days later than Thornton's

[1] See a dispensation granted by him in 1518 in *Laing Charters*, No. 313, and another to a couple suffering from the impediment of the third degree of affinity, *Lib. Off. S. Andr.* p. 161.

[2] See Stuart's *Lost Chapter in the History of Mary Queen of Scots*, 68, 69.

[3] This is pointed out by Dr. Hay Fleming, *Register of St. Andrews Kirk Session*, p. 116, note.

commission, David Christison, Canon of Glasgow, and George Cook, Canon of Dunkeld, were granted a commission from Rome to dispense thirty-five couples.[1] This gives us a vivid sense of the large demand there was at the time for such dispensations.

It would be interesting if we knew the financial arrangements between the penitentiary and his commissaries. We may probably assume that the *taxae* of the Roman penitentiary would be undiminished, and the saving effected for those applying for dispensations would allow the commissary to be compensated for his trouble.

[1] *Laing Charters*, No. 457.

CHAPTER XVII

CANON LAW AS AFFECTED BY PAPAL DISPENSATIONS

Those who confine their studies to the statutes and other ecclesiastical enactments of the medieval Church in Scotland will gain a very imperfect, and, indeed, a very misleading view of the actual condition of the Church, as it manifested itself in the realities of every-day life. The provisions of statutory law may be excellent in intention; but we have further to inquire as to how the law was administered. It may be acknowledged that good sense and even a feeling for substantial justice will indicate that there are occasions when the rigour of law should be controlled and modified by considerations of equity. On the other hand, wholesale dispensations of law constantly occurring must inevitably bring the law into contempt.

The power claimed and exercised by the Pope to dispense with any ecclesiastical law of human institution gave an element of uncertainty to the endeavours of the wisest of the Scottish churchmen when attempting to correct flagrant abuses and provide remedies for the growing corruptions of the time. The law of the Church, for example, was in its spirit thoroughly exposed to the evils that are consequent on the piling up of ecclesiastical preferments on certain favoured individuals. No two benefices with pastoral care (cure of souls), each in theory involving continuous residence, could legally be held by one and the same person. Yet dispensations from Rome of this law were so frequent as to be one of the greatest of the scandals and reproaches that disgraced the medieval Church. Scotland, it is true, was no worse off in this

respect than England. But the evidence, afforded by such unimpeachable authorities as the pages of the *Papal Registers*, shows that the accumulation of ecclesiastical benefices upon certain clerks, who were unable to fulfil in person the duties of the offices which they held, was an evil from which Scotland suffered severely during the greater part of the period with which we are concerned.

And when we turn to consider how these dispensations were obtained, the picture does not become more attractive. The favour of a nobleman, or the recommendation of a prince, if one could only get him to speak the word, was all but invariably effective. To act with ability, or at least to the satisfaction of one's masters, in the public affairs of the State, was a much more certain road to ecclesiastical preferment than the most painstaking discharge of the duties of the pastoral office.

Together with dispensations most liberally bestowed, we have to take into view the system of papal 'reservations,' as it was styled. This proceeded on the doctrine that every ecclesiastical benefice was in theory at the disposal of the Pope. When a benefice fell vacant the Pope might declare that he had 'reserved' it to his own provision. In such a case the rights of the ordinary patron were suspended for the occasion; and from the interminable list of clamorous and greedy applicants the Pope would make his appointment. If the benefice was valuable it might be some Italian favourite of his Holiness that was nominated; or he might do an act of gracious courtesy to some importunate lady who had been making entreaty on behalf of a chaplain that stood high in her good graces.

The evils of this system were somewhat qualified by its affording opportunities for making provision for scholars, whether native or foreign, who had distinguished themselves at the Universities of France, Italy, or England. But though it was desirable that a becoming maintenance should be procured for men of this kind, nothing could be worse than appointing them to benefices the duties of which they were never expected to fulfil except by an ill-paid deputy. A man of real eminence in the learning and science of his day, like Michael Scott (the 'wizard' of

popular Scottish tradition), deserved without doubt encouragement and reward. But even a patron of learning might well hesitate to pile upon him, as was done by Honorius III., two or three benefices 'with cure of souls' in England and two in Scotland.[1]

By this system of reservation and provision the bishops were deprived of much of their legitimate influence. A bishop might have his eye on some hard-working vicar in a country parish, and plan his advancement to some post where he would have greater scope, or where, at least, he might enjoy more of the comforts of life which had been well earned by long and faithful service. But when a benefice fell vacant it was often found that, if it had anything to commend it, it had been 'reserved' already by the Pope.

In a word, so far as the distribution of patronage was concerned, Scotland was little different from a mere dependency and appanage of the Roman see. As it happened, the comparative poverty of Scotland presented few objects of desire to those who hung about the Roman court on the look out for posts of emolument. Consequently we find a much larger proportion of foreigners beneficed in England than in this country.

Occasionally we find a bishop giving audible expression to his disgust. Thus in 1363 the Bishop of Glasgow in a letter to Urban V. declares that 'on account of the multitude of those who expect benefices by papal authority, he is unable to make provision to his own people,' and he actually petitions the Pope for a canonry at Glasgow for his own secretary.[2]

Many benefices were indeed without cure of souls, such, for example, as the prebends of the canons of cathedral and collegiate churches, and these (unless in the case of certain of the 'dignities' which were expressly declared to

[1] See *Calendar of Papal Registers* (Letters), i. pp. 94, 96, 102, 117. Scott is described in the first of these letters 'as eminent in science,' and he was presumably the same as the author of *Liber physionomiae*. It seems that Pope Honorius appointed Scott to the Archbishopric of Cashel, and that Scott to his credit resigned that dignity because he was 'ignorant of the language of that land.' See Theiner's *Monumenta*, No. lvi.

[2] *C.P.R.* (Petitions), i. 400.

be 'incompatible,' that is which could not be held together with other benefices) might be accumulated on one person to any extent. Indeed nothing was more common than the holding of canonries at the same time in two, three, or even four of our Scottish cathedrals. And the acquisition of these pluralities was very commonly secured by the Pope's provision, or at his request or mandate. Every few pages of the *Calendar of Papal Registers* will furnish some illustration of this truth. But with the help of dispensations from Rome benefices of all kinds, whether with or without cure of souls, could be, and were, piled on those who had influence, direct or indirect, with either the king or the Pope. Royal chaplains and the king's clerks were, as one may readily conceive, brought frequently under the notice of the Pope with a view to preferment. It was thus always easy to remunerate services done to the sovereign or his household without dipping too deeply into the royal purse. There were few more frequent and persistent petitioners of the Roman court than Joan, Queen of David II. Letter after letter making request to the Pope for benefices for her chaplains will be found in the volume of *Petitions to the Pope*, published under direction of the Master of the Rolls (1896). But it had long been the practice in England to amplify the revenues of state officials by accumulating on them church preferments. Thomas Becket, while yet only in deacon's orders, is believed to have had at least twenty benefices. And in the following century John Mansel, royal chaplain and judge under Henry III., far surpassed the limit of Becket, accumulating to himself by the help of dispensations no less, as has been alleged, than 4000 marks a year from the revenues of the Church. Scotland furnishes a case that makes a parallel to Becket's, in William Wischard, archdeacon of St. Andrews and chancellor of the king, who, according to Bower (*Scotichron.* x. cap. 28) held together with his archdeaconry, as rector or prebendary, twenty-two churches. He was eventually postulated to Glasgow, but before consecration was translated to St. Andrews.[1]

As has been already remarked, the number of foreigners

[1] Postulated, 1271; Consecrated, 1273.

drawing revenues from Scottish benefices was comparatively small. But that soreness was caused by imposing aliens on the Church is beyond question. In 1248 the Bishop of St. Andrews seems to have successfully resisted the intrusion of a certain Canon of Florence, 'son of Spilatti, citizen of Florence,' into one of the parishes of his diocese. In the same year the Pope, moved no doubt by remonstrances from this country, graciously declared that in consideration that the Cathedral of Glasgow was burdened by having to make provision for four Italians, while there were only nine prebends and five dignities, it should not be necessary to make provision for any other until the death or resignation of one of the Italians.[1] Only one week, however, after this indult was signed, we find the Pope commanding the Bishop of Moray to make provision to Peter, son of Ingebald, a 'Roman citizen,' of one or more benefices in the diocese of St. Andrews,[2] while two years earlier, for this same Peter, the Pope had ordered the Abbey of Dunfermline to provide a benefice of 20 marks in value.[3] That there were Italians holding Church preferment at this time in considerable numbers may perhaps be inferred from the general papal ordinance of the year 1247, that Italian clerks in Scotland must give 'to the Church' half their pensions in the case of pensions over 100 marks, and quarter of their pensions below that amount.[4] A few months later Gerard 'of Rome' is authorised to hold the church of St. Andrew, Kirkandrews, together with his canonry at Glasgow and prebend at Renfrew; and it is stated in support of the ordinance that Gerard's uncle had been penitentiary to the Pope.[5] Other examples might be cited; but at no period did Scotland possess so many rich prebendal and other benefices as those which made England a happy hunting ground for needy or avaricious foreigners.[6]

[1] *Papal Registers*, 12 Kal. Maii, 1248. [2] *Ibid.* 5 Kal. Maii, 1248.

[3] *Ibid.* 11 Kal. Maii, 1246. [4] 2 Non. Maii and 3 Kal. Jun. 1247.

[5] Non. Oct. 1247.

[6] Cases now and then occur (but they are not numerous) where Scottish ecclesiastics, apparently serving in Scotland, were granted benefices abroad. The most notable examples belong to the close of our period. Forman,

In 1253 William de Kilkenny, Archdeacon of Coventry, afterwards Chancellor of England and Bishop of Ely, was granted in 1253 leave to hold the church of Largs (on the Clyde) in the diocese of Glasgow, together with a prebend in Dublin, the treasurership of Exeter and other English preferments.[1]

A glimpse of an effort at resistance on the part of a Scottish bishop to the intrusion of foreign ecclesiastics is afforded by a brief notice in the *Calendar of Papal Registers*.[2] It seems that the Pope, Urban IV., had impowered the Cardinal of St. Eustace's to procure the gift of two dignities or benefices with or without cure of souls, in Scotland for his two nephews, Albert and Boniface. The Bishop of St. Andrews refused to make such provision, pleading an indult of the Pope which he alleged had been granted to him. The cardinal tried to enforce his claim, but the bishop declined to yield, and actually excommunicated the cardinal for his persistence, whereupon the Pope directed a mandate to the Bishop of Dunblane and the Archdeacon of St. Andrews to proceed to make the provision demanded. In England (eleven years earlier, in 1253) Grosseteste, Bishop of Lincoln, had refused to institute a nephew of Pope Innocent IV., who was only a child. At that time England was certainly heavily oppressed by provisions for foreigners. Innocent IV., in a letter addressed to the archbishops and bishops of England, states that it had been represented to him that the Church of England was burdened for aliens to the extent of 50,000 marks; and he desires that the sum be reduced to 8000 marks, 'so that there be no complaint.'[3] But the evil still continued, though perhaps not to the same extent.

A few examples (drawn from the pages of the *Calendars of Papal Registers*) of the provision of foreigners in Scotland may be added to those already noticed. In 1254 the Bishop of St. Andrews is commanded to make provision

Bishop of Moray, received the Archbishopric of Bourges, while Cardinal Beaton was Bishop of Mirepoix.

[1] *C.P.R.* (Letters), i. 290.
[2] (Letters), i. 414.
[3] *C.P.R.* (Letters), i. 286.

of one or more benefices, prebendal or other, up to the value of 50 marks, for John de Civitella, papal subdeacon. In the same year the Pope orders that a benefice in Scotland, to the value of 40 marks, should be provided to the son of the noble Landulf de Cecano, a nephew of one of the cardinals. In 1292 Conrad de Brunforte, chaplain to the Pope, was holding at the same time a parish in the diocese of St. Andrews and canonries with prebends in Liège, St. Omer, and Aberdeen.

The extreme difficulty of collecting either tithes or rents during the protracted wars with England during the reigns of the Edwards, and the deplorable depreciation in the value of the revenues of the Church (as indeed of all landed property in Scotland) made a considerable alteration. Scotland no longer offered the same attractions to ecclesiastics abroad on the look out for preferment. But whatever be the cause, at the period referred to, the diminution in the numbers of foreigners holding preferment in Scotland is observable.

The cathedrals and monasteries had good reason to object to the demands made upon them to provide to the Pope's nominees, whether natives or foreigners, benefices in their patronage. And we have evidence that respectful remonstrances were addressed from time to time on the subject to the Apostolic see. The Priory of St. Andrews was successful in obtaining (1228) authority from Gregory IX. to refuse for the future to grant allowances (*pensiones*) from their revenues to secular clergy.

In 1259 the Bishop, Dean, and Chapter of Moray obtained the right of refusing to make provision for any person mentioned in a papal or legatine letter unless the letter made express reference to the fact that this privilege had been granted. In other words, all that was effected by this privilege was that the nomination made by the Pope or his legate should be made with the consciousness that complaint of the burden imposed on the chapter had been in a measure acknowledged. The Pope could still, by the insertion of a *non obstante* clause, when he was so disposed, cause the chapter to give effect to his wishes. And as a matter of fact there was probably no cathedral that suffered more than Moray from the demands for provisions.

In 1245 the Abbey of Dunfermline obtained an indulgence protecting the house from having in future to provide benefices or pensions unless the Pope expressly made mention of the indulgence.[1]

In 1201 (27th July) Pope Innocent III. granted an indulgence at the request of the king to the Abbey of Cambuskenneth releasing that body from giving pensions or benefices to nominees of the Pope without a special mandate making mention of the indulgence.[2]

The accumulation of benefices piled upon individuals resident in Scotland was an evil scarcely less clamant. The Dean of Glasgow in 1307 was dispensed to hold the churches of Egliston and Stow in the diocese of Lincoln, and a canonry and prebend in Dunkeld. We sometimes get a glimpse of the number of benefices held by favoured clerks, from the records of the scramble for their preferments when any of them was promoted to a bishopric. Thus, before his promotion to the see of Dunblane (1361), we can gather that Walter had held at the same time the deanery of Aberdeen, a canonry and prebend of Dunkeld, a canonry and prebend of Ross, and the parish church of Inverarathen in the diocese of St. Andrews.[3] In 1331 John de Leys is provided by John XXII. to a canonry and prebend of Moray, notwithstanding that he had a canonry and prebend of Dunkeld, a canonry of Glasgow with expectation of a prebend, a canonry of Dunblane, and the perpetual vicarage of Abernethy.[4]

In 1353 Walter de Coventre, Dean of Aberdeen, held, together with his deanery, a canonry in Dunkeld and a canonry in Ross, and was further granted by the Pope provision of a canonry in the cathedral of Moray with expectation of a prebend.[5] In 1351 Alexander Steward (*senescalli*) was provided by the Pope to a canonry in Moray, he being then also Archdeacon of Ross, Canon of Dunkeld, and Canon of Aberdeen, with the prebend of Cruden. The latter canonry and prebend he was to

[1] *Cal. Pap. Reg.* i. 8 Kal. Maii, 1245.

[2] *Chartulary of Cambuskenneth*, p. 51. [3] *C.P.R.* (Petitions), i. 325

[4] *C.P.R.* (Letters), ii. 363.

[5] *C.P.R.* (Letters), iii. 480.

resign.[1] It would be easy to enlarge the list by dozens of examples from the *Calendars of Papal Registers*.

Leaving the subject of dispensations for pluralities, we have to point to the extremely liberal grants of dispensations for the admission of bastard children to Orders and to the benefices of the Church. According to the law of the Church—the canon law—no one might be ordained who was suffering from what was known as 'defect of birth' (*defectus natalium*), that is, who had not been born in wedlock. It was obviously a rule that tended to maintain the sacred ministry in the respectful consideration of the people, and to put honour upon the married state. But it is also obvious that occasions might arise when it might be of real advantage to the Church that the law should be dispensed with. What we have to remark is that dispensations for illegitimacy were granted with so lavish a hand that it is certain that a considerable proportion of the clergy in Scotland, not only among the rank and file, but perhaps in even still greater abundance among the dignitaries and high officials of the Church, was drawn from the offspring of irregular connexions. The facility with which dispensations were obtained afforded to the nobility and landed gentry of Scotland, and, indeed, one may add, to the royal family, an easy way of providing more or less comfortably for bastard sons.

It was common on the occasion of the Pope sending a legate to England or Scotland to confer on him the power to dispense for 'defect of birth,' and that, frequently, on a very liberal scale. Thus Cardinal Ottobon, as papal legate, in 1265 was impowered to grant dispensations to fifty clerks of illegitimate birth in England, and fifty other clerks of illegitimate birth in Scotland, Ireland, and Wales, to minister in the orders they had received and to be promoted to higher orders. But they must not be the sons of monks, or of adulterous or incestuous parents. He was further impowered to dispense ten such persons to hold benefices with cure of souls in England, and ten in Scotland, Ireland, and Wales.[2] The two nuncios sent to England in 1337 were impowered to grant dispensations to

[1] *C.P.R.* (Letters), iii. 414. [2] *Ibid.* i. 429.

one hundred clerks of illegitimate birth in England and France to be ordained and hold a benefice apiece.[1] And in 1312 the same powers were granted to Cardinal Arnald and the Bishop of Poitiers, papal nuncios to England, but without any limitation as to numbers.[2] Extended powers of a like kind were bestowed on Guy, Bishop of Sabina, legate in 1263.[3] The possession of these faculties added, no doubt, very largely to the influence of the legates and nuncios. A dispensation might be had without the troublesome process of sending a petition and having it 'expedited' at Rome. But the pages of the *Calendars of Papal Registers* show abundantly how frequent were the applications direct to the Apostolic see for dispensations of this kind, and how readily they were granted. Nor are examples wanting of the dispensations of children of adulterous parentage.[4]

The royal family, naturally as things then went, received special consideration. The Pope *proprio motu* appointed Thomas Steward, natural son of Robert II., to the archdeaconry of St. Andrews and to the canonry and prebend of Stobo in the Cathedral of Glasgow, the latter benefice having been held by James Steward, deceased, a brother of Thomas. Shortly afterwards Thomas Steward is given the deanery of Dunkeld, which he is allowed to hold together with his former benefices, and to these a canonry at Brechin was soon added.[5]

Once again, the conferring of ecclesiastical benefices on children was directly opposed to the canon law; but with the help of papal dispensations (and sometimes on the express mandate of the Pope) favoured children, the 'nephews' of cardinals, or the sons of royal or noble persons, were often granted at an early age a benefice, or a cathedral canonry with its prebend. English history is more rich in examples of this corruption than Scottish,

[1] *C.P.R.* (Letters), ii. 539. [2] *Ibid.* 105. [3] *Ibid.* i. 399.

[4] See *C.P.R.* (Petitions), i. 621. An extreme case is that of the dispensation (1394) of John Gray, son of a married man and a nun, to hold a cathedral dignity. This was granted at the request of Thomas Steward, Archdeacon of St. Andrews, himself the natural son of King Robert II. *C.P.R.* (Petitions), i. 592.

[5] *C.P.R.* (Petitions), i. 551, 574, 577.

probably because benefices worthy of acceptance were to be found in greater abundance in the southern kingdom. But the case of the youthful Archbishop of St. Andrews, who fell at Flodden, is familiar to all.[1] Nearly a century earlier another bastard son of the royal family of Steward was, while still a child, promoted to ecclesiastical preferment. In 1416 Alan Steward, then only twelve years of age, an illegitimate son of the Earl of Atholl and Caithness, was made a canon and prebendary of Dunkeld by Benedict XIII. Two years later Cruden, in the diocese of Aberdeen, and other benefices were added.[2]

The uncle of Alexander Stewart who fell at Flodden, James Stewart, second son of James III. by Margaret of Denmark, was appointed to the primatial see of St. Andrews in 1497, when he was only twenty-one years of age. A dispensation from Rome set aside the impediment arising from 'defect of age.'

Of dispensations for defect of age other examples will be mentioned. One is the case of the appointment (1554) by the Pope (Nicholas V.) of William Forbes, a student at Paris of twenty years of age, to the deanery of Brechin. He had already enjoyed a canonry and prebend in the cathedral. He is described as a kinsman of James, King of Scots, and nephew of the Bishop of St. Andrews, James Kennedy.[3] Another is that of the dispensation of William Cunynghame, Provost of Trinity College, Edinburgh, in his twenty-sixth year, to hold the bishopric of Lismore. He is also dispensed to retain with it all his benefices.[4] He is supposed to have been a brother of the Earl of Glencairn.[5] In 1348 the Queen of Scotland petitions the Pope on behalf of Thomas of Duns, who is under nineteen years of age, for a benefice in the gift of the prior

[1] Sir Archibald H. Dunbar, who has devoted his labours to the minute study of the dates of Scottish history, considers that Alexander Stewart was born 'about 1493,' and made Archbishop of St. Andrews 'in or before July, 1505' (*Scottish Kings*, 220).

[2] *C.P.R.* (Letters), ii. 605, 609, 610.

[3] *Registrum Brechinense*, ii. 402, 403.

[4] The *Barberini MS.*, cited by Brady (*Episcopal Succession*, vol i. 161).

[5] Keith's *Catalogue*, 289, and Wood's *Peerage of Scotland*, i. 638.

and chapter of St. Andrews. Clement VI. grants the queen's petition.[1]

Dispensations from the requirements of the Church's law of matrimony have been dealt with in the last chapter, and are again referred to in the following chapter.

It was either necessary or, at least, highly expedient for anyone elected to a bishopric to resort without delay to Rome to 'expedite' the business of his confirmation by the Pope. The travelling thither would involve expense, and the delays were often considerable. But it is plain from evidence of various kinds that large sums were required for what was known as 'expediting' the bulls. Now it was contrary to the law of the Church that a bishopric, that is, the property of the see, should be burdened with debt. In the case of wealthy persons with good credit, a loan might be effected in the ordinary way. In the case of those not so fortunate a difficulty arose. But the Popes were frequently indulgent in sanctioning the raising of money on the credit of the revenue of the bishopric when the money was to be spent in Rome. Thus, with a view to the expediting of the confirmation of Gamelin (1254) to the see of St. Andrews, permission was granted to raise a loan of '500 lib. new sterling' by giving an obligation over the property of the see.[2] Again, Richard de Pilmor was appointed Bishop of Dunkeld by Pope Clement VI. in 1343. He petitioned the Pope to allow him to borrow on the credit of the revenues of his church the sum of 3000 gold florins for expediting his business. The bond was to be over all the goods of the church of Dunkeld, movable and immovable. The permission sought was granted.[3] Again, in 1322, Maurice, Bishop

[1] *C.P.R.* (Petitions), i. 145.

[2] *C.P.R.* (Letters), i. 319.

[3] Theiner, No. 660. In 1348 the Archbishop-elect of Canterbury has permission to borrow 16,000 gold florins for a similar object (*C.P.R.* (Letters), iii. 39). And in 1345 Thomas, elect of Ely, is given a faculty to contract a loan of 12,000 gold florins for the like object (*Ibid.* 26). In 1309 the Bishop of Coventry and Lichfield is authorised to borrow 1000 marks to meet his expenses at the Apostolic see (*C.P.R.* (Letters), ii. 57). In 1313 the Bishop of Worcester receives permission to borrow 3000 florins (*Ibid.* 119). In 1314 Walter, Archbishop-elect

of Dunblane, was granted a faculty to contract a loan of 1000 florins to meet his expenses at the Apostolic see.[1]

of Canterbury, is allowed to borrow 15,000 florins of gold; and in 1328 Simon, Archbishop of Canterbury, is allowed to borrow 2000 lib. to meet his expenses at the Apostolic see (*Ibid.* 121 and 272).

[1] *C.P.R.* (Letters), ii. 222.

CHAPTER XVIII

THE ECCLESIASTICAL COURTS

With a view to obviate by anticipation a possible confusion, it may be proper to explain that we do not purpose dealing with the temporal jurisdiction, civil or criminal, which bishops and abbats very frequently possessed. Such jurisdiction was what was granted in greater or less measure to all the greater and many of the lesser vassals of the crown. The bishops and abbats, as having been granted large holdings in lands, were commonly granted jurisdiction similar to that granted to temporal lords. The extent of the jurisdiction would in each case depend on the terms of the charter granted. The matter is put sufficiently clearly in the first book of *Regiam Majestatem* (cap. 4), a work which, though of English origin, may be taken as in general correctly setting forth Scottish practice. We cite it in the language of the old vernacular translation: 'Of civill pleies, quhilks are nocht criminall, and touches nocht life and limme, some perteines to Provests and Baillies of Bourghs and Cities: others to the courts of Barons, Earles, Bishops, Abbats, and other frie-halders, qua hes their proper courts, conforme to the tenour of their chartours. And some criminall actions perteins to some of the Judges foresaids and to their courts: and chieflie to them qua hes power to hald their courts with sock, sack, gallous and pit, toll and thame, infangthief and outfangthief. Except alwaies the pleis perteining to the King's court.' In a word, the jurisdiction of the greater ecclesiastics was in their temporal courts the same as that of the other vassals of the crown to whom royal charters had

conveyed the right of holding courts, the extent of the jurisdiction being set forth in the charter.[1]

To pursue this subject belongs rather to the history of Scottish civil and criminal law. We shall delay only to remark that it would seem that the grant of 'pit and gallows' (*furca et fossa*) is to be found less frequently in ecclesiastical charters.[2] Yet instances are not wanting of the fullest powers being conferred on courts held by ecclesiastical vassals.

Not only were many ecclesiastics entitled to hold courts of barony (*cum furca et fossa*), but in several cases the ample jurisdiction known as a 'regality' was conferred by the crown on ecclesiastical persons, which jurisdiction was exercised over their 'subjects,' that is, the inhabitants of their landed possessions. In matters of civil jurisdiction the 'lord of regality' had powers in all respects equal to those of the sheriff: and his criminal jurisdiction, as Erskine puts it, 'was truly royal.' He might judge in the four pleas of the crown, and his jurisdiction was as ample as that of the justiciary, treason only excepted. Ecclesiastics ordinarily exercised their judicial functions by a steward or bailie (*ballivus*)—an office often occupied by some great noble, and not infrequently granted (strange as it may seem) in heritage.[3]

It will suffice for our purpose to notice a few examples. The regality of St. Andrews was granted by James II. to

[1] The interpretation of the terms 'soc,' 'sac,' 'toll,' 'thame,' 'infangthief,' 'outfangthief,' is dealt with in most treatises on feudal tenures. Of the earlier discussions on these terms one may consult Skene's *De verborum significatione*, Craig's *Jus Feudale*; and of the later, Innes' *Scottish Legal Antiquities*.

[2] Compare the Scottish statute, 'We ordain that no clerk shall dictate or write a sentence of blood (*sententiam sanguinis*)' (*S.E.S.* ii. 60). The generally prevailing view of the impropriety of ecclesiastics imposing a sentence of death or mutilation is clearly put in the statute of the Council of London in 1075, under Archbishop Lanfranc (reaffirming the decision of early councils) that 'no bishop, abbat, or any of the clergy shall judge a man to death or to the loss of a limb (*membris truncandum*), or give the support of his authority to judges who do so' (*W.C.* i. 363). But the ballivus (or bailie) of the bishop's court could do what the bishop could not do.

[3] See Erskine's *Institute of the Law of Scotland*, book i. tit. iv. §§ 7, 8, 9.

Bishop Kennedy and his successors in the see in 1452.[1] The lands of the church of Moray were by the same monarch erected into a barony (known as the barony of Spiny), *cum furca et fossa*, in 1451, and into a regality in the following year.[2] In 1450 the bishop's possessions at Glasgow, already a burgh of barony, were erected into a regality.[3] It may be added that several of the monasteries had grants of the ample jurisdiction of regalities.

But our present concern is merely with the spiritual courts, or, as they are sometimes called, 'courts of Christianity' or 'consistorial courts.'[4]

The cases which chiefly occupied the ecclesiastical courts were matrimonial suits, including questions of legitimacy and bastardy, and questions of dowry. To these were to be added the very important class of causes relating to testacy and intestacy, and the probate and interpretative construction of wills. Beside these topics, which formed the principal subjects upon which the canonists expended their legal ingenuity, cases of slander were commonly decided in the spiritual court. Moreover, the canon lawyers sought to extend the jurisdiction of their courts to all cases of contract, which had been fortified by the oaths of the parties. Again, there were many suits arising out of disputes as to patronage, and out of the non-payment of tithes, or dues, and the interference with the property of the Church; and, lastly, many petty cases that would now be dealt with in the police courts, such as assaults on ecclesiastical persons and assaults and brawling in sacred places.

Besides the causes which by general assent belonged to the jurisdiction of the bishop's court, a considerable amount of business came before this court by way of consent. This consensual jurisdiction arose from the

[1] *Acts of Parliament*, ii. 73, 74.

[2] *Regist. Ep. Morav.* 223-226.

[3] *Regist. Ep. Glasg.* 375-377.

[4] That the caution is not unnecessary may be gathered from the fact that so excellent a lawyer as the late Lord Fraser seems to have confused a grant of secular jurisdiction made to the Bishop of Moray by King Robert II. with the claims of spiritual jurisdiction. See *Treatise on Husband and Wife* (2nd edit.), p. 8.

expressed or implied agreement of parties, and contracts frequently contain a clause of submission to the jurisdiction and arbitrament of the bishop or his official.

The bishop of each diocese had his consistorial court presided over by a lawyer skilled in the canon law, and not infrequently well trained also in the civil law. This judge was known as the official. He appears to have been a deputy judge, not an inferior judge; and from his decisions there was ordinarily no appeal to the bishop. The great diocese of St. Andrews had an official for each of the two archdeaconries into which it was divided. The Archdeaconry of Lothian, including, as it did, the capital city of the kingdom, supplied a large proportion of the causes dealt with. The official of the Archdeaconry of St. Andrews, besides the business proper to his district, in which he acted as a judge in a court of first instance, possessed also, at least after the creation of the archbishopric, a jurisdiction on appeal from the Officials of other dioceses, and from the Official of Lothian.

It would seem that even after the erection of the archiepiscopal province of Glasgow causes from that province might be appealed from the judgments of the diocesan officials to the court of the Official Principal of St. Andrews.

The paucity of records of the bishops' courts prior to the sixteenth century makes one welcome the notice of a rather curious case, which has been preserved where we should little expect to find it, in the *Register of the Bishopric of Moray*, which, like similar registers, is mainly a collection of charters relating to ecclesiastical property. It appears that in 1389 the Bishop of Moray and the Bishop of Ross conjointly sat in the church of the Black Friars at Inverness to hear and dispose of a case arising out of a dispute between husband and wife. The parties were persons in high station, the man being Alexander Stewart, Earl of Buchan, fourth son of King Robert II., better known to us by the expressive sobriquet, 'the Wolf of Badenoch,' and the woman being Euphemia, Countess of Ross. The sentence is all that remains of the process. But from it we learn that the bishops sat as the ordinaries

of the parties, and, if I interpret the record aright, that the countess had fled from her husband, pleading that she was in terror for her life, and that her husband was cohabiting with another woman, a certain 'Mariota, daughter of Athyn.' The countess seems also to have somehow claimed independent control of her possessions as Countess of Ross. At all events, the judgment decreed that she and her possessions should be restored to her husband, that Mariota should be dismissed, and that the earl should give security that he would treat the countess decently *in lecto et mensa*, *in victu et vestitu*, and *sine periculo mortis*, under a penalty of £200. The Earl of Buchan, who was present in person, faithfully promised to fulfil all and singular the requirements imposed by the judges, and gave as securities for the payment of the penalty for non-fulfilment of his engagement, the Earl of Sutherland and two others.[1] It looks as though the action was that of the husband for the restoration of conjugal rights, including what doubtless the earl regarded as more desirable than the possession of the person of his wife, the possession of her property. The sitting together of the two prelates, the Bishop of Moray being ordinary of the earl and the Bishop of Ross of the countess, is a remarkable feature. Possibly there were counter cases, and that for convenience they were taken together.

The records of the consistorial courts of Scotland have almost wholly perished, and the scanty remains which have survived are all of a late date. The earliest of the documents is a volume containing the judicial decisions (*sententiae*) of the Official of Lothian from 1512 to 1552. We also possess the judicial decisions of the Official Principal of St. Andrews from 1541 to 1554, and what is described as 'a rough minute book' of the court of the Official of Lothian for a couple of years of the period included among the other documents. This last volume is known as the *Liber Actorum*. These three books are now in the General Register House, and have supplied the material from which extracts have been printed in the volume presented to the Abbotsford Club by the late

[1] *Reg. Ep. Moray*, pp. 353, 354.

Lord Medwyn, and entitled *Liber Officialis Sancti Andree* (1844).[1]

If the contents of the *Liber Actorum* have been rightly interpreted it is evident that a vast amount of business was dealt with in the court of the Official of Lothian. 'The court sat generally every week-day. It was constituted by the official or his commissioner; and the number of cases that came before it at a sitting varies from fifteen to fifty.'[2]

The general principles of the matrimonial law of the medieval Church have been dealt with elsewhere. It is enough to repeat here that according to the theological conceptions of the western church a valid marriage, which had been consummated, could never be dissolved. Hence divorce in the language of the canon law never signified such a separation of the parties duly contracted in consummated matrimony as would permit either of them to marry again. The word *divorce* was used either for a separation from bed and board (*a mensa et thoro*) on account of the infidelity or cruelty (*sevitia*) of one of the parties in a marriage acknowledged to be valid;[3] or else for what was merely a declaration of the *nullity* of a marriage which had been contracted contrary to the law of the Church. In the latter case the decree of nullity was ordinarily accompanied with the judge's sanction for the parties each contracting a fresh marriage 'in the Lord.' Divorce in this latter sense was said, in technical language, to be a divorce from the bond of marriage (*a vinculo matrimonii*).

There was an evident reluctance to grant a separation in cases of the alleged cruelty of the husband. Occasionally it was granted, and sometimes with the requirement that the husband should provide alimony for the wife and children. In other cases the separation was refused; but the husband had to give caution for the safety of the wife's person.[4]

[1] The work of editor was performed by Mr. Cosmo Innes.

[2] *Liber Off. St. Andr.* Preface, p. xii.

[3] Besides adultery and cruelty, certain other reasons, which need not be detailed, were allowed to be sufficient for an application for a divorce *a mensa et thoro.*

[4] *Ibid.* Nos. 76, 131, 134, 149, 158.

In the cases of divorce for adultery the guilty husband had to provide alimony, and sometimes to restore property or money which had come to him as his wife's dowry. On the other hand the guilty wife lost all right to any profit from 'dowry or donation.'

But the great majority of the matrimonial causes are instituted with a view to divorce, in the sense of a declaration of nullity of the pretended marriage. And as the law of the medieval Church forbade the marriage of persons related to one another in any of the degrees of consanguinity or affinity up to, and including the fourth, cases of divorce on this ground were of very considerable frequency. It was sometimes possible, we may suppose, for the contracting parties to ascertain whether they were related by blood (*consanguinitas*) with one another.[1] Yet, when we remember that it was sufficient to invalidate a marriage if the parties were related by being descended from the same great-great-grandfather or from the same great-great-grandmother, there would be often to the most diligent inquirer considerable, or, indeed, insuperable difficulty in being absolutely secure. The family histories of the poor are not recorded, and a man might be living happily in wedlock for a score of years before some accident revealed to him that his reputed wife was a third cousin, and therefore no real wife in the eye of the Church, and that his children were illegitimate. But the doctrine that *affinity* up to and including the fourth degree was an impediment to marriage vastly increased the uncertainty whether a marriage was valid or not. According to the Church, affinity was created equally by illicit intercourse and by marriage. An act of prenuptial unchastity, let us suppose, on the part of the man with a woman related to his future wife in the fourth degree of consanguinity invalidated his marriage. It was obviously possible for a man, by keeping the evil secrets of his early life to himself, to contract a marriage which he would be able at any time to get declared null in the

[1] Even among the nobility ignorance is often pleaded in petitions for a dispensation from the Pope for a marriage already contracted and solemnised between parties related to one another in the fourth degree of consanguinity.

consistorial court. Nor was it always the man who took advantage of the ecclesiastical law in this respect.

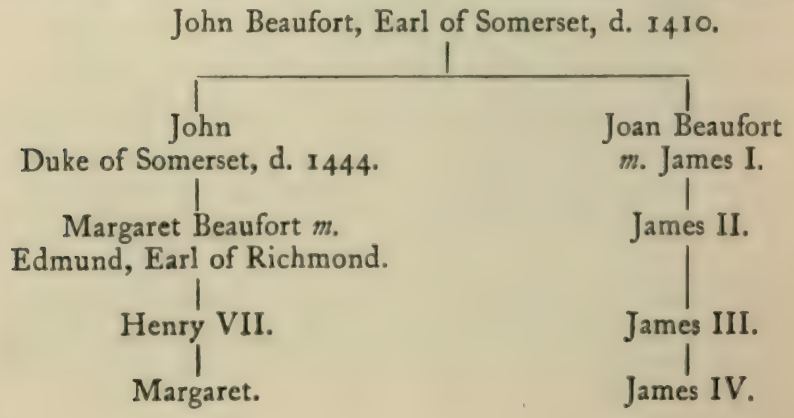
The records of the consistorial court bring before us the case of Jonet Betoun, afterwards 'the Ladye of Branksome tower,' who figures in Scott's *Lay of the Last Minstrel.* The suit was brought by 'the honourable lady, Jonet Betoun, Lady of Cranstoun Riddall,' against the 'honourable man, Simon Prestoun, Younger, Lord of Craigmillar,' for divorce, on the ground that before her marriage with Prestoun, she had sinned with the 'honourable man, Walter Scott of Buccleuch,' to whom Prestoun was related in the third and fourth degrees of consanguinity. The divorce was granted, 'dowry and donation' were to be returned by each of the parties, and each was pronounced free to marry 'in the Lord.' The lady thereupon marries her former lover, Buccleuch. In this case there is no pretence that there had been any promise of marriage between Jonet and Walter. The lady proclaims her own shame, and obtains her desire.[1]

The matrimonial adventures of Margaret, sister of Henry VIII. of England, and queen of James IV., make a curious story, more limited in range, but scarcely less scandalous than that of her royal brother. In 1502 she was affianced to James, and a papal dispensation had to be procured for the marriage, as the parties were related to one another within the prohibited degrees.[2]

After the death of the king at Flodden, the queen scarcely waited for her recovery after giving birth to the

[1] *Lib. Off. S. Andr.* p. 86.

[2] The relationship was the fourth and fourth of consanguinity:



king's posthumous child (Alexander, Duke of Ross), before she married the youthful and handsome Earl of Angus. Presently growing tired of Angus, she sought a divorce. Various grounds were alleged, among others that she was not a widow at the time of her marriage, because James IV. was not killed at Flodden, but had survived for three years in secrecy near Brankston. This allegation was ineffective, but the marriage was set aside on the ground of a precontract of marriage, in which Angus had been one of the parties. The papal bull confirming the divorce contained a clause pronouncing the legitimacy of the offspring of the marriage, the Lady Margaret Douglas, afterwards mother of Henry, Lord Darnley.[1]

The new object of the queen's affections was Henry Stewart, afterwards created Lord Methuen, a son of Lord Avondale.[2] But before long this lady of fickle heart grew weary of Methuen, and a new action for divorce was instituted by the queen. Again she was successful, and this time the divorce was granted on the ground that Methuen was related to Angus in the fourth and fourth degrees of consanguinity.[3]

The last, or one among the last, of the divorces granted by the consistorial court of the Archbishop of St. Andrews under the old laws, was that granted on 30th May, 1563, to Hugh, Earl of Eglinton, against his reputed wife, the Lady Jane Hamilton, daughter of the Duke of Chatelherault. In effect it was a declaration of the nullity of the pretended marriage on the ground that the parties were related to one another in the fourth and fourth degrees of consanguinity.[4]

Other causes of divorce brought under our notice by the records of the Scottish consistorial courts are only such as would everywhere be recognised as vitiating the

[1] Bishop Lesley says, 'Archiepiscopus Sanct-andreapolitanus divortii sententiam tulit, ea tamen lege ut proles ex eo matrimonio suscepta, propter parentis, saltem Reginae, *ignorantiam*, nihil inde damni pateretur,' *De Reb. Gest.* p. 399 (edit. 1578).

[2] Methuen was pronounced Meffen, and was so sometimes spelled.

[3] *Lib. Off. S. And.* p. 60.

[4] W. Fraser's *Memo. of Montgomeries*, ii. 163 ff.

pretended contract. There are cases of violent abduction when the woman gave no true consent, but only yielded to terror, and cases of 'error,' when one woman was passed off on the man for another. And other causes, which need not be here particularised, that have been everywhere acknowledged both by civil and ecclesiastical law as dissolving the marriage contract, may be found exemplified in the *Liber Officialis*.

I am afraid it must be admitted that Scotland, at least towards the close of our period, had a certain pre-eminence for the frequency of cases of divorce. John Mair (Major), whose residence out of Scotland had made him acquainted with life in England and in France, and who knew Paris as well as he knew Edinburgh, an honoured theologian of the Sorbonne, who was proud of his native country, a man 'of the old learning,' but singularly fair-minded, does not hesitate to declare (writing in 1521), 'The Scots of our time too lightly resort to divorce; and most laymen think it suffices to their souls' health that a divorce should be pronounced in the consistorial court (*in foro exteriori*) on the statements of false witnesses; and so they live in adultery with other women whom they think to be their wives.'[1] This testimony of Mair points to what is not revealed in the brief and formal *sententiae* of the judge, that perjury and the subornation of witnesses too often formed a feature of the proceedings.

Through the accident that the sentence of the official of the consistorial court of an earlier date has been preserved in an Act of Parliament we are put in possession of the pleas put forward in a *cause celèbre* of the fifteenth century, which ended in the divorce of Alexander Stewart, son of James II., and Duke of Albany, from the Lady Catherine Sinclair, daughter of William, Earl of Caithness. The proceedings in the suit had, it appears, been going on for some time, but it was not till 9th March, 1476-77, that definitive sentence was pronounced in the church of St. Giles, Edinburgh, by the Official of Lothian. Their spousals *per verba de futuro* had been followed by *carnali copula*. But the ground of the declaration of the nullity had nothing to do with the secrecy of the union, or with

[1] *Hist. Maj. Brit.* lib. v. c. xxiii.

the contract being only *per verba de futuro*. The judgment of the consistorial court was based solely on the fact that the parties were related to one another in the fourth and fourth degrees of consanguinity. As was usual in such cases the parties were allowed to contract fresh unions *in Domino*. The duke married as his second wife the Lady Agnes of Boloigne, and of this marriage John, Duke of Albany, was the offspring. The whole matter came before Parliament in 1516, as bearing on the succession to the crown of Scotland. On that occasion Alexander Stewart, the son of Catherine Sinclair, appeared in Parliament. He was then Commendator of Inchaffray. Parliament declared that he had been born a bastard, and he himself publicly stated before the three estates that he had never 'right nor mind to succeed in any manner to the said umquhile Duke of Albany.'

The Parliament on this occasion mentions that the parties in the divorce had made their pretended marriage 'quietly without any publication or solemnities required thereunto, against the decretes and constitutions of the Kirk.' But it is certain that that fact would not have invalidated the marriage in the eyes of the Church.[1]

The result of our whole inquiry is that the rule as to the prohibited degrees was commonly made use of when the man and woman had grown tired of one another; while for those who were content to remain in union it was easy to obtain a dispensation for continuing to live as man and wife, and a declaration of the legitimacy of their offspring.

Apart from suits for divorce, some notion of the very miscellaneous character of the cases brought under the review of the consistorial courts may be gathered from the following specimens selected from the *sententiae* printed in the *Liber Officialis*. These notices suffer much from abbreviation, but they will suffice for our purpose.

(1) Sibil Halkerstoun, or Bertrem, who is the patron of the chaplaincy attached to the altar of St. Laurence in the collegiate church of St. Giles, Edinburgh, brings an action against the chaplain, Andrew Steward, who by the sentence of the court is removed and deprived 'for his

[1] *Act. Parl.* ii. 383.

demerits and delicts committed and perpetrated contrary to the tenor of the foundation of the chaplaincy.' The lady is authorised to present a fit person to fill the chaplaincy thus vacated.[1]

(2) James Achinsoun, chaplain and 'farmer' (*firmarius*) of the vicarage of the parochial church of Creichtoun, sues Andrew Heriot, executor of the late Jonet Borthwick, his spouse, for the mortuary due on her decease. He is awarded the second best animal and eight merks Scots.[2]

(3) The court gives sentence compelling submission to a decree arbitral in a matter submitted for adjudication to arbitration. This is an example of consensual jurisdiction.[3]

(4) Alex. Gordoun, 'donatory' of the movable goods and debts of the late D. Gordoun, vicar of Stirling, 'bastard and illegitimate,'[4] sues James Crag, presbyter, for sixteen pounds, probably alleged to be a debt due to the deceased.[5]

(5) The court declares a certain will to be forged.[6]

(6) Margaret Smyth is condemned, for defamation of Margaret Rettray, to appear on the next Sunday at the time of high mass (*tempore magnae missae*) before the altar of our lady of pity within the church of St. Giles, Edinburgh, and there publicly on her knees to ask the forgiveness of Margaret Rettray.[7]

(7) Ellen Bell is excommunicated for having cruelly struck in the face, with her fist, Mariot Harlabanks in the church of St. Giles, Edinburgh, and in the presence of the sacrament. The offender is ordered to appear on the next Sunday in the new aisle of the holy blood within the said church at the time of high mass, and in the presence of the judge, or his substitute, the provost of the city and others, to offer to the priest celebrating mass a lighted wax candle of half a pound in weight, to ask his forgiveness, and on bended knees, and with face uncovered, humbly to beg the pardon of the judge and of the woman whom she had assaulted. After which she was to be

[1] *Lib. Off. S. Andr.* p. 123. [2] *Ibid.* p. 119. [3] *Ibid.*

[4] The reason why the words *bastardi et illegitimi* are added was probably because according to Scots law a bastard was incapable of making a testament. [The 'donatory' may thus have received a grant from the Crown.]

[5] *Lib. Off. S. Andr.* p. 118. [6] *Ibid.* p. 126. [7] *Ibid.* p. 127.

absolved from the excommunication. Nor was the absolution to be granted in any other way than prescribed.[1]

(8) The sacrist of the collegiate church of St. Giles sues the dean (*decanus*) of the Guild of Bakers and the master of the fabric of the altar of St. Hubert in that church for certain sums in consideration of services rendered on St. Hubert's day last past. The defenders are condemned to pay xviij *d.* for the ringing of the bells, xviij *d.* for 'le organis playing,' and viij *d.* for 'le sans' on St. Hubert's day.[2]

(9) The provost of the collegiate Church of Dunglass obtains sentence against James Morisoun for the mortuary of his late wife, namely, forty shillings instead of the 'upmaist claith' (*pro veste superiori*) and thirty shillings *pro preciosiore animali*.[3]

(10) The chaplain, 'farmer' (*firmarius*) of Ednam, obtains sentence against the Prioress of Eccles, ordering her to deliver to the chaplain aforesaid, the 'umaist' or 'upmaist claith' and other funeral dues on account of Elizabeth Hendersone, parishioner of Ednam, notwithstanding that the said Elizabeth died in the parish of Eccles and was buried in the parish church of Eccles.[4]

(11) The judge declares a deed of resignation of the lands of Selmys made by Andrew Elphinstoun in favour of the Earl of Mortoun, and registered in the books of the consistorial court to be null and invalid.[5] The reasons are not given. This would seem to have been a case submitted to the court by consent.

(13) The Earl of Bothwell (Patrick, *anno* 1532) is excommunicated for 'unjust and daring intromission' with certain tithes of corn without the licence of the Archbishop of St. Andrews.[6]

(14) The procurator fiscal of the Archbishop of St.

[1] *Ibid.* 132.

[2] *Ibid.* p. 134. In October of the same year, 1536, we find that the sacrist had again to sue the bakers for the organ playing and 'le sans' on St. Monan's day—the first of March—and for ringing the great bell on the morrow of the anniversary celebrated for the brethren of the Guild of Bakers. The 'sans' is, I suppose, incense. Bellenden used 'sense' with that meaning.

[3] *Ibid.* p. 127. [4] *Ibid.* p. 128. [5] *Ibid.* p. 124. [6] *Ibid.* p. 130.

Andrews petitions the court to declare that the prior of Pittinweme and the monks of that convent, and another, have incurred 'irregularity' on account of an alleged case of manslaughter, etc.[1]

(15) John Crag, burgess of Haddington, died intestate: the Archbishop of St. Andrews claims the right of appointing executors; this claim is opposed by George Waik, but the archbishop's claim, made in the court by his procurator fiscal, is sustained.[2]

(16) The parishioners of Libertoun, and the masters of the fabric of the parish church, whom I take to have corresponded to our modern churchwardens, bring serious charges against the vicar. The court suspends him for three years 'for his enormities and crimes,' and excommunicates him for contempt, and disobedience to the letters of the archbishop.[3]

(17) The action of Isobel Keringtoun and her husband, Robert Litstar, against Jonet Brus for defamation brings before us the low billingsgate of a woman in the public street. The sentence of the court has preserved for us a fine specimen of coarse vernacular abuse. Besides the wax candle which had to be presented to the church, and the begging of forgiveness from the injured parties, the offender had to pay ten pounds Scots.[4]

(18) We have three or four cases where the court is invoked to decide as to disputed elections to the office of parish clerk, which was commonly, at this time, in the hands of the parishioners.[5]

These much curtailed and imperfect notices will give a better notion of the miscellaneous character of the business that occupied the ecclesiastical courts than any mere general statement.

There is reason to believe that the courts of the Church commanded general respect. The procedure was exact, and the judges were drawn from a large body of well-trained lawyers. To say that they were always above

[1] *Ibid.* p. 129. 'Irregularity' is an inability imposed by canon law to receive 'orders' in the church or to exercise the functions attaching to 'orders' already possessed.

[2] *Ibid.* p. 132. [3] *Ibid.* p. 136. [4] *Ibid.* p. 138.

[5] *Ibid.* pp. 117, 120, 131, 137.

external influence would be to claim for them what could not be justly claimed even for the king's justiciars. The general desire was to do justice; and there are but few indications of any disposition on the part of the judges to be respecters of persons. Judgment was often given against bishops and abbats, as well as against the great nobles.

As customary in other courts of law, the costs of the suit were generally to be paid by the loser. The taxing (*taxatio*) of the costs, that is, their estimation, was reserved to the court.

The probate of wills, and all suits arising out of testamentary dispositions and last wills, were dealt with in the ecclesiastical courts. For some reason which is not apparent, it was thought desirable in the year 1420 to have a formal inquiry made as to the custom of the Church in respect to the probate and execution of testaments. In the provincial council held in that year at Perth, the conservator (William Stephenson, Bishop of Dunblane) directed the senior clergy of each diocese to be sworn, and give evidence as to the usage in their respective dioceses. They were unanimous in declaring that beyond the memory of living man the practice had been that the bishops and those possessing 'ordinary jurisdiction'[1] had confirmed 'the testaments and codicils' of those dying within their respective circuits of jurisdiction, and had appointed executors to those who had died intestate. They had also caused the goods of the deceased to be 'sequestrated' (that is, they prevented such goods being dealt with by any one) until the testaments had been presented to the ordinaries, and had by them been lawfully confirmed. Moreover, it was declared that the ordinaries had been accustomed to require from the executors, as well of the intestate as of those who had left wills, an oath of faithful administration, and an obligation upon themselves to render an account of their intromissions to the ordinary and to those who had an interest in the administration of the trust. Inquiry was also at this time

[1] 'Ordinary jurisdiction,' that is, a jurisdiction based on canonical constitution, and not delegated. Thus a bishop's vicar-general, though appointed by the bishop, possesses after appointment 'ordinary jurisdiction,' and similarly with the official principal.

made on oath as to the proportion (*quota*) allowed to the ordinary for confirmation of the wills. The testimony was that the custom had been to divide the movable goods of the deceased into three parts, of which (after the payments of the debts of the deceased) one part went to the wife, one part to the children, and one part (which was sometimes called 'the dead man's part') was used by the executors for the payment of the funeral expenses, 'for the soul' of the deceased,—that is, for masses and prayers,—and for the payment of legacies. From this third part there also fell to be paid to the ordinary for the confirmation of the will and his labours thereanent twelve pence in the pound, or a composition for the same. There is evidence which goes to show that the five per cent. was rated on the whole of the movable estate of the deceased, though actually payable from the 'dead's part.'[1] The practice and ancient custom, borne witness to at this provincial council, was now enjoined on 'the clergy and people' as the rule of the Church.[2]

As concerns what relates to the division of the movable goods of the deceased into three portions, one for the widow, one for the children, and one for 'the dead's part,' the Church courts were only giving effect to a custom widely recognised in various parts of Europe. So far as I am aware the custom was recognised in all parts of Scotland. But we have the testimony of Lyndwood that, though common, it apparently did not prevail everywhere in England. He discusses the question what is to be done if the goods of the deceased are partly in a place where the rule prevails that half goes to the wife, and partly in a place where the rule is that only one-third goes to the wife. His answer is, that the rule of each place should have force in respect to the goods situated in that place.[3]

[1] See Erskine's *Institute*, book iii. tit. ix. § 28. This was known in legal phraseology as 'the Quot of Testaments.' [See also Stair's *Institutions*, ed. 1832, ii. 8. 25.]

[2] *S.E.S.* ii. 77, 78.

[3] *Provinciale*, lib. iii. tit. 13 (in the Oxford edit. of 1679, p. 172): Notes to *Consuetudinem Patriae*, and *Defunctos contingit.* In France the *legitima* was the third part of the deceased's goods, which of necessity went to the heirs. See *Consuetudines Ducatus Burgundiae* (edit. *Lugduni*, 1682), col. 930.

Reverting to the distribution of the movable estate as recognised by the ecclesiastical courts of Scotland in medieval times, our Church records are very brief and imperfect. For instance, the cases are not dealt with of a man dying but leaving no widow, or leaving no children, or leaving neither wife nor children. But the deficiency in our records may, I believe, be safely supplied by what Lyndwood indicates was the English rule, namely, that when there was neither wife nor child, the whole was at the disposal of the testator, and that when there was either wife or child, half was 'the dead's part,' and the other half went to the wife or child, as the case might be.[1] Certain early decisions of the Court of Session, so far as they go, fall in with this.[2] The old collections of laws in *Regiam Majestatem* and the burgh laws all concur in speaking to the threefold division of the movable goods and gear, while *Regiam Majestatem* testifies to half being at the disposal of the testator in the event of his wife having died before him.[3]

Of course we must remember that there is always a considerable element of uncertainty as to how far *Regiam Majestatem* accurately represented the actual state of the law in Scotland. Yet in default of positive evidence we may conjecture that the practice in Scotland may have been similar to the law of England, as expressed in 31 Edward III. cap. 11, which provides that in the case of intestacy the ordinary shall depute 'the nearest and most lawful friends of the deceased to administer his goods; which administrators are put upon the same footing, with regard to suits and to accounting, as executors appointed by will.'[4] In England, after assigning their *partes rationabiles*,—a third each to the wife and to the children,—it was the general use in the case of intestacy to claim the whole of the dead's part for the Church to be spent on pious uses

[1] *Provinciale, ibid.* p. 178 : Note to *Defunctum.*

[2] See the decision in the case of Lady Glamis *contra* Lord Gray (A.D. 1503), as cited in Balfour's *Practicks*, p. 217, where more will be found on this subject.

[3] See lib. ii. c. 37 and *Leges Burgorum*, cap. 125, sec. 4.

[4] Blackstone, *Commentaries*, book ii. chap. 32.

and for the relief of the poor. Such disbursements were said to be *pro salute animae* of the deceased.

The successful efforts of certain of the monastic orders to obtain exemption from episcopal control made it necessary for the bishops, in the interest of the testators, to put a restriction on the employment of religious as the executors of wills. An account of the property bequeathed had to be furnished to the ordinary, and the executor, in all ordinary cases, could be compelled to appear, and furnish such account, in the consistorial courts. This was obviously reasonable and necessary. But executors of the exempt orders could simply plead their exemption from episcopal jurisdiction. It was for this reason that the following statute (of the thirteenth century) was enacted: 'Inasmuch as an accurate account of the goods bequeathed in the testament of any one should be made and rendered to the ordinary of the place, and inasmuch as the Cistercians, and others exempt, cannot be compelled to render such an account, as they allege, we therefore decree that no exempt religious may be constituted executors; and if such have been constituted executors, the appointment shall be held as utterly void.'[1]

The readers of Sir David Lyndesay will recall an allusion to the evil referred to in the statute where, in the testament of the king's papyngo, the dying papyngo is beset by three ecclesiastical persons, the pie, a canon-regular, the gled, 'ane holy frier,' and the raven, a black monk, all desirous to hear her confession and to be appointed her executors. The reply of the papyngo, bearing in mind that the 'senye' is the vernacular for the consistorial court, speaks for itself.

> 'It dois abhor my pure perturbit spreit
> Tyll mak to zow ony confessioun:
> I heir men saye, ze bene one ypocrite,
> Exemptit frome the senze and the sessioun.
> To put my geir in zour possessioun,
> That wyll I nocht.'[2]

In England similar restrictions had to be imposed. In the constitutions of Archbishop Peckham (1281) it is laid

[1] *S.E.S.* ii. 18.

[2] *Sir David Lyndesay's Works* (E.E.T.S.) p. 247.

down in conformity with an earlier ordinance, adopted at a council at Lambeth, that no religious 'of whatever order' (*cujuscunque professionis*), without the licence of the ordinary, should be permitted to be the executor of a testament. Peckham adds that, moreover, the superior of the religious must give caution that the religious in such a case will execute the will faithfully, and render an account to the ordinary without raising any difficulty [on the ground of exemption].[1]

As we have already seen, the witnesses in the provincial synod, 1420, testified to the recognised practice of the ordinaries in each diocese appointing executors to deal with the property of persons dying intestate. Such executors were known as *executors dative*, in distinction from the executors appointed by one who had made a will, these being known as *testamentary executors*.

In *Regiam Majestatem* (lib. ii. cap. xxxviii. 2) it is laid down that if the testator shall have named no executors, his near relations and kinsfolk (*propinqui et consanguinei*) may offer to act. But the determination of the executors, it would seem, still belonged to the ecclesiastical judge.

The statutes that go under the name of the Assize of King William declare that, 'If any free man shall die intestate his goods shall be distributed by the hands of his friends and relations (*amicorum suorum et parentum*) and by provision of Holy Church, excepting such debts as the deceased owed.' This limits the choice of the executors to the family and friends; it was from such the Church was to make its appointment; but the nature of the distribution was to be fixed by the ordinary. The rule that the movable goods were to be divided into three parts,—the wife's part, the children's part, and the 'dead's part,'—seems to have held good in this case as in the case of the testate. But in the case of one dying intestate, if I understand correctly the sense of one of the thirteenth century statutes,[2] a third part of the 'dead's third' was claimed by the Church, apparently as 'mortuary,' of which more has been said in another place.[3]

[1] *W.C.* ii. 59. The council of Lambeth referred to was that of 1261. See *ibid.* i. 754.

[2] *S.E.S.* ii. 44. [3] See p. 186. The text of this statute is very corrupt.

A manifest hardship sometimes inflicted by the ecclesiastical courts was dealt with by Parliament in 1540. In the case of the death of a minor (incapable of making a will), the ordinary naturally exercised his right to appoint executors. But as the preamble of the act states, these executors might withdraw the goods from the kin and friends that should have the same; and it was accordingly enacted that the nearest of kin entitled to succeed should take possession, but without prejudice to the 'quot' due to the ordinary.[1] In effect the spirit of this enactment was confirmed, and its scope somewhat extended, by the provincial council of 1558-9.

We learn from the statutes of the provincial council of 1549 that the practice with regard to testaments in the islands of Orkney and Shetland was different from that which prevailed on the mainland of Scotland. We may presume that it was a persistence of the practice which existed in those places when the diocese was under the metropolitan jurisdiction of Trondhjem. The council enacted that the law of wills in those islands should be conformed to the law of the other dioceses of the kingdom.[2]

Ten years later, in the provincial council of the Church before the Reformation, it was enacted that the ordinary should appoint the executors, in the case of persons dying intestate, from among the kinsfolk or relations of the deceased, who were to render account at the end of the year to the ordinary of their intromissions. The same council enacted that neither the ordinaries nor their 'familiars' were to receive anything from the goods of deceased persons except the customary 'quot.'[3] This provision obviously points to unwarranted exactions on the part of the officers of the court.

The same provincial council terminated a rather vexatious distinction between the common law of Scotland and the law of the consistory as to the time when minors reach their majority. The ecclesiastical law had regarded twenty-five years, and the common law twenty-one, as the age when majority was attained. The new statute enacted

[1] *Act. Parl.* ii. 377. [2] *Stat. Eccl. Scot.* ii. 111.
[3] *Ibid.* 167.

that in the ecclesiastical courts majority was attained at the completion of the twenty-first year.[1]

We possess various incidental notices illustrating, though, it must be confessed, imperfectly, the action of ecclesiastical courts in earlier times. The sentence of excommunication was inflicted for the graver offences against morality. In 1332, or about that time, the Official of Glasgow was waylaid and maltreated on a journey from Glasgow to Ayr by a layman whom he had excommunicated for adultery.[2] The abbat and the majority of the monks of Melrose were in 1268 excommunicated for having invaded the sanctuary of Wedale, slain a cleric, and wounded others. And there is no doubt that the formidable weapon was used freely in contests where the rights and privileges of the Church were supposed to be invaded. A notable example was the excommunication of John of Dunmore, knight, who, in spite of the support of the king (Alexander III.) and his council, was brought to his knees by Bishop Gamelin of St. Andrews.[3] A dispute originating in the removal of some cattle from the lands of the Abbat of Cambuskenneth resulted in the excommunication of the Bishop of Dunkeld.[4]

Excommunication was, from the civil and social as well as from the spiritual side, a very formidable punishment. The denial of the rites of the Church and of Christian burial was accompanied by social ostracism; and in addition, when the secular arm was invoked, excommunication meant ruin. Excommunicated persons were denied the ordinary rights of citizens in the civil tribunals. They could not bear testimony; they were refused 'proof and acquittance' in the king's courts.[5] There is preserved the form of a 'brief of caption' addressed by the king to sheriffs enjoining them to seize and imprison any person excommunicated within their jurisdiction who for forty days contumaciously persisted in despising 'the keys of Holy Mother Church.'[6] In 1443 it was enacted

[1] *Ibid.* 172.

[2] *Extracta ex variis cronicis Scocie*, 159.

[3] *Scotichr.* x. 22.

[4] *Chartulary of Cambuskenneth*, 317.

[5] *Act. Parl.* i. 744.

[6] *Quoniam Attachiamenta*, lxi.; *Act. Parl.* i. 659.

by Parliament that laws previously made by the provincial synod and by Parliament should be enforced, namely, that excommunicated persons should have no access to the court or to Parliament, nor be heard or answered in the law of judgment of fee or heritage, or other causes, till they amended and obtained absolution in form of law.[1] A few years later (1449) we find an Act of Parliament, which points apparently to some laxity on the part of the officers of the crown in giving effect to the sentences of the ecclesiastical tribunals. It is therein provided that when an excommunication is made known by the ordinary the king's letters of caption shall be granted, and 'the aulde law usit as effers [*i.e.* is fit].' It is further enacted that those under censure of the Church shall be put by the sheriff, or other officer, in 'the king's ward.' If the culprits were fugitive, their lands or goods were to be taken possession of, and those who had no lands or goods were to be 'put to the king's horn.'[2]

In 1233 certain papal judges-delegate, the deans of Carrick and Cuningham and another, appeal to the king to lend 'the secular arm' to punish an excommunicated person who continued contumacious.[3]

Persons who believed themselves to be unjustly excommunicated could appeal to the Pope; but this was a costly and tedious process.

Doubts as to who was Pope during the great schism led the Parliament in 1400 to enact that if any one of the king's lieges believed himself to have been excommunicated by an unjust process he might within forty days appeal to the conservator, that is, the bishop elected annually by his brethren to preside at the provincial synod, who was with the aid of his council to pronounce

[1] *Act. Parl.* ii. 33.

[2] *Ibid.* ii. 35. The same rule had been in force in the Church of England. We find in 1391 a priest in the diocese of St. Asaph who had been excommunicated for contumacy in refusing to appear in the ecclesiastical court in a matter of dispute about the right to a certain benefice, imprisoned for two years by the secular power which had been invoked by the ordinary and the Archbishop of Canterbury. *Cal. Pap. Reg.* iv. 387-8.

[3] *Ibid.* i. 76.

on the matter; and if the party still felt aggrieved, there was a further appeal 'ad generalem cleri congregationem,' by which phrase, as I suppose, the provincial synod was meant. To this arrangement the clergy, as well as the others of the lieges, consented during the continuance of the schism.[1] There is no doubt that Scotland generally adhered to the anti-Popes; but it would be possible for an objector to raise the question as to who was Pope. Hence the sensible decision arrived at by Parliament.

The loss of civil rights, more particularly that of suing in the king's courts, entailed by the greater excommunication is well illustrated in the case of Sir John Borthwick. He had been declared a heretic and excommunicated on 28th May, 1540, by Cardinal Beaton, sitting in his court at St. Andrews, and assisted by the Archbishop of Glasgow, four bishops, six abbats, two priors and a considerable number of learned ecclesiastics. He himself was happily a fugitive; but all his goods, movable and immovable, were confiscated. More than twenty years later, when the power of the reforming party made it safe for him to return to Scotland, he was incapacitated from seeking the restoration of his property in the civil courts until the sentence of excommunication had been reversed by 'the superintendent and ministrie of St. Andrews,' who were now exercising the functions of a consistorial court. On the 5th September, 1561, with the observance of all formalities this court pronounced that the doctrines Sir John had maintained were not heretical, and that he 'may persew his just accions befoir ony juge competent.'[2]

[1] *Act. Parl.* i. 576.

[2] *St. Andrews Kirk Session Register*, edited by Dr. D. Hay Fleming (Scottish History Society), 88-104.

CHAPTER XIX

THE CELIBACY OF THE CLERGY: THE LAW OF THE CHURCH AND ITS ADMINISTRATION

Long before the opening of the period with which we are concerned the rule of the western church had forbidden the marriage of those in Holy Orders. But it was a rule which in many places was not regarded, nor enforced by authority. In the eleventh century a fresh and powerful impetus was given to the practical insistence on complying with the law by the energy and zeal of the masterful Hildebrand. He contended at all times that not only was the unmarried state nearer to the Christian perfection which became those engaged in the service of God, but that detachment from the ties of family was essential to the spiritual supremacy of the Church.

In England before the eleventh century the marriage of the secular clergy had been common. Ordinances were enacted against the practice, but in many cases the bishops did not dare to enforce them. Indeed, as late as 1107 Pope Pascal II., writing to Archbishop Anselm, says that he understands that the majority of the clergy of England are married, and he grants to the archbishop permission to ordain their sons. In the following year the Council of London enacted stringent regulations, but the effect was small. Later on the 'secular arm' was invoked; and King Henry II. imposed a tax, or fine, upon the clergy who retained their wives. This was a device which brought him a considerable accession to the revenue. King John went further; he seized the wives of the clergy, and exacted a heavy ransom for their release.

The Church meanwhile passed enactment after enactment to restrain the practice. A recent historian of the Church of England has justly observed: 'The frequent repetition of severe decrees in peremptory language sounds formidable, but as a matter of fact neither at this period (1060-1272) nor in the times which follow down to the reformation in the sixteenth century was the celibacy of the clergy very rigorously enforced in the English Church. It must be borne in mind that secular clerks did not, like monks, take a vow of celibacy, and although their partners were stigmatised by opprobrious names, most of them were in fact married; and such unions were not void in themselves, but only voidable if the parties were brought up before the ecclesiastical court. Thus, although the priest who scrupulously observed the rule of celibacy was no doubt held in the higher esteem, the married clerk was by no means regarded as a reprobate, and the high-sounding penalties pronounced in the ecclesiastical synods against offenders were rarely enforced, except in a modified form.'[1] The passage which we have cited may without one word of alteration be applied to the medieval Church in Scotland.

Dispensations from Rome, as we have seen, helped to make in many cases the written law of none effect. But law may be set at nought in other ways than by dispensation. The connivance of authorities with the violation of law is not less effective. And a most patent illustration of such practical connivance will be found throughout our whole period in regard to the general law of the Church, forbidding the marriage of the clergy.

Though statutes were again and again enacted and again and again repromulgated, forbidding the marriage of the clergy, as a matter of fact the clergy of both England and Scotland during the whole of the period with which we are concerned were (in considerable numbers) living with women either in a relationship scarcely distinguishable from marriage, or (less frequently) associated with them in looser or more temporary connexions. It is simply a matter of fact that for the five hundred years

[1] *The English Church from the Norman Conquest to the Accession of Edward I.*, by W. R. W. Stephens, Dean of Winchester, p. 298.

with which we are dealing enactment after enactment was launched by synods against what were called 'concubinary priests'; and yet during the whole of that time the priest's concubine and the priest's children must have been familiar figures in a large number of Scottish and English parishes. It may be that as we approach the era of the Reformation the irregularities in the lives of the great ecclesiastics of Scotland were more shameless and more glaring than was common among the prelates and dignified clergy of England. But during by far the larger part of the period there seems to have been, so far so our evidence goes, little or nothing to choose in this respect between the conditions of things in the two kingdoms.

The first of the Scottish statutes of the thirteenth century, dealing with this subject, declares in the preamble that the governors of the Church always sought to expel the 'putrid infection,' and that nevertheless it was always shamelessly showing itself. It was therefore determined to give effect to the statutes of the Roman pontiffs and especially to the decretals of Pope Alexander III. It was therefore enacted that clerks, and especially those in Holy Orders, who 'publicly' kept concubines in their own houses or the houses of others must remove them within a month's time, or be suspended from office and benefice. Archdeacons and deans of Christianity are enjoined to make diligent search in all the deaneries whether this statute is observed.[1] That the evil complained of was in no sense peculiar to Scotland is obvious from the fact that the language of the statute is transcribed from the constitutions of the Council of London held in 1237 under Cardinal Otho, the papal legate.

Natural and, indeed we may say, right feeling would prompt the clergy living in this relationship to make some provision for their children and the women with whom they were cohabiting. The ecclesiastical law attempted to forbid this. Another Scottish statute, in the same collection as that the provisions of which we have cited, forbade clerks buying houses or possessions for the use of their concubines and their children; and then went on to declare that if the clergy bequeathed anything to their

[1] *S.E.S.* ii. 15.

concubines, the bishop should divert such a legacy to the benefit of the parish which the offending clergymen had served.[1]

In a body of Scottish statutes that seem also to belong to the thirteenth century similar enactments are made, only more offensive language is applied to the woman who was the priest's associate.[2] The woman is not to be received in any church to the kiss of peace at mass, or to the benefit of blessed water; nor is she to be received at confession unless she is ready to forsake her connexion with the priest. If she dies in the house of the priest she is to be refused Christian burial. On the offending clergyman, before more stringent measures were taken, a pecuniary fine was to be imposed.[3] In the fourteenth century, if the priest persisted after due warning he was to be fined forty shillings and suspended; failure to improve after a second warning was visited with a fine of ten marks; and for a third offence he was to be deprived. The somewhat peremptory one month allowed in the thirteenth century for the priest to dismiss his concubine was, however, now extended to three months. From the fifteenth century no body of statutes has survived; but that the practice complained of continued is evident from other sources. Thus, Mary of Gueldres, when founding Trinity College, provided that any prebendary not dismissing his concubine or *focaria*, after being thrice admonished, should lose his prebend.[4] We have a similar ordinance (1449) in respect to the collegiate church of Creychtoun.[5]

Restalrig was erected into a collegiate church in 1487. It was a chapel royal, and was much favoured by royalty; but that the lives of the prebendaries were not free from

[1] *Ibid.* p. 17.

[2] The words used are *focaria* and *fornicaria*. These terms are applied here without any sharp distinction from *concubina*; but they suggest a temporary connexion. *Focaria* is supposed to be derived from *focus*; hence it means a kitchen-wench or house-keeper.

[3] *S.E.S.* ii. 55.

[4] See Marwick's *Charters relating to the City of Edinburgh*, p. 105.

[5] *Charters of the Collegiate Churches in Midlothian*, p. 310.

irregularity seems probable from the fact that James V., in a charter dated 10th Oct., 1515, thought it necessary to lay down a rule which is expressed in language so remarkable that it deserves quotation. It should be observed, to appreciate the full force of the passage, that special attention to church-music (both plain-chant and descant) was bestowed in the rendering of the services at Restalrig. 'Inasmuch,' says the royal charter, 'as the bellowing of bulls and the grunting of swine is more pleasing to God than the chanting of shameful sensualists, and as it is becoming that they should live chaste and spotless lives where bodies are made the sepulchre of Christ, and who daily sacrifice the spotless Lamb, the Son of the Virgin, we statute and ordain that no prebendary shall have or keep a concubine, or *focaria*, or women secretly introduced; and if he shall do otherwise and have been three times warned by the dean or his deputy, if he does not amend or forthwith dismiss her really and effectually, his prebend after the third monition shall be judged vacant and shall be in fact vacant.' [1]

In the sixteenth century we again have pronouncements against concubinary clergy; and the statutes of 1549 point in addition to the practice of those in authority taking bribes to wink at the offences of the priests.[2] The synod 'exhorts' prelates not to have the children born in concubinage to live with them, nor to advance them to preferments in the Church, nor to have them raised to the baronage, nor, finally, to provide dowries out of the patrimony of the Church for those of their daughters whom they married into noble houses. No one can doubt that, when these words were penned, the thoughts of the framers of the statute ran back to the notorious conduct of the Cardinal Archbishop of St. Andrews, who had fallen under the hands of assassins not three years before.

The very last synod of the ancient Church met in 1559. In its belated zeal for a moral reformation among the clergy this synod indulges in language of extraordinary frankness. The law against 'concubinaries' was to be put in

[1] *Charters of Collegiate Churches in Midlothian*, p. 287.

[2] *S.E.S.* ii. 88.

force against offending bishops and other prelates as well as against the inferior clergy. The two archbishops, 'of their own accord, and for a good example to others,' agreed to submit themselves to the inquiry, and if need were, to the admonition of a commission, the members of which are named. The archbishops were empowered to apply the law against 'concubinaries' to abbats, priors, and commendators, as well as to their suffragans; and the suffragans were bound to execute the law in the cases of the inferior clergy. This much, it might perhaps be contended, was resolved on only to meet the popular clamour of the reforming party. But it is plain from the succeeding statutes, that there was an acknowledgment that the evils complained of were not imaginary but real.

A statute was adopted providing that prelates and others should not keep and bring up their children begotten in concubinage in their 'families,' that is, in their households. They might have them with them for four days every three months, but not for a longer time. And when the children were with them it was to be in privacy (*non palam*). The penalty for a violation of this statute was to be £200 in the case of an archbishop and £100 in the case of a bishop or other prelate. The fines in the case of the inferior clergy were to be at the discretion of the ordinary. And the fines were to be applied 'to pious uses.'

In another statute the synod forbids any archbishop or other prelate directly or indirectly giving or procuring Church-preferment to his children. Every such provision was to be null and void. And, that the statute might really be effective, the synod resolved to beg the queen to supplicate the Pope that his Holiness would in future grant no dispensations contrary to the purport of the statute, and that if such dispensations were fraudulently obtained without mention of the statute, they should be held as null and void. Lastly, another statute of the same synod is devoted to regulating the marriage and dowry of the daughters of prelates or other ecclesiastics, and the amount which might be bestowed on their sons. In no case were Church lands to be alienated, or let, to their concubines or their children.

Here, after centuries of vain endeavour, is the last pronouncement made by the Scottish Church before the Reformation on the chastity of the clergy.[1]

Shortly before the holding of the synod of 1558-9 the Bishop of Aberdeen, William Gordon, son of the Earl of Huntly, had invited the dean and chapter of his diocese to give him their counsel as to the measures to be adopted for the 'stanching of heresies pullulant within the Diocie of Aberdene.'[2] The first advice given to the bishop is that he cause the 'kirkmen within his Lordschip's Diocie' . . . 'to remove thair oppin concubinis, alswell greit as small.' The chapter promises to put the law in force in the sharpest manner 'on thairselfis.' After other good counsel, the chapter suggests 'that his Lordschip wald be so gude as to schew gude and edificative example, in speciale in removing and dischargeing himself of company of the gentilwoman be [*i.e.* in respect to] whom he is gretlie slanderit.'

The foundation charters of chantries in the sixteenth century bear the same testimony of the prevalence of evil lives of the chantry priests.[3]

Nothing could be more unreasonable than to accept the picture presented by such a humorous satirist as Sir David Lyndesay, if it were unsupported by other evidence. But the evidence for the immorality of the Scottish clergy in the middle of the sixteenth century is, unhappily, so copious and unimpeachable, that one hesitates to say that the poet was guilty even of exaggeration in the indictment which he sets forth in *The Thrie Estatis.*

In 1550 Robert Schaw, a youth of eighteen, the son of a priest (a canon of Dunkeld) and an unmarried woman, obtained a dispensation from the Pope to be ordained a priest and to hold a canonry and prebend in the same cathedral, on the condition that he should not officiate at

[1] *S.E.S.* ii. 153-6.

[2] The reply of the chapter (which was transcribed by Father Thomas Innes) will be found in Keith's *Affairs of Church and State*, vol. i. p. cxx, and in *R.A.* i. pp. lxi-lxv.

[3] See an illustration in the foundation (1528) at St. Andrews for the souls of certain bishops of Orkney (*Laing Charters*, No. 368).

the altar together with his father, and should not succeed to his father's benefices.[1]

When we are dealing with the sixteenth century the material for forming a judgment on the frequency of concubinary priests is ample. For the thirteenth, fourteenth, and fifteenth centuries our evidence from local sources is scanty. But the publication of the *Calendar of Papal Registers* supplies in the long lists of dispensations for the ordination of the sons of priests evidence of an unimpeachable kind. To the bishops of English dioceses faculties for granting such dispensations are bestowed with a liberal profusion. In Scotland the number is much less; but when we consider the vastly larger number of benefices in England and the much larger population of that country, it would be rash, without a more exhaustive examination, to say that the *proportion* of dispensations of this kind fell short of those in England. It must be remembered, too, that a dispensation from Rome cost money, and that Scottish ecclesiastics could not, as a rule, boast of revenues equal to those of their English brethren.

It may be presumed that many of the sons of the parish clergy of Scotland would not follow their fathers' calling. With such, as, of course, with all the daughters of the family, the papal registers have but rarely anything to do.

Both in England and in Scotland we find examples of benefices being handed down from father to son. This was contrary to the ecclesiastical law. Yet we find Pope Urban III., towards the close of the twelfth century, permitting the Bishop of Glasgow in cases of this kind, where the sons had claimed the benefices as of hereditary right, to wink at the violation of the law, or, as it is put in the language of the Pope, to allow it to pass *sub dissimulatione*, on account of the length of time the benefice had been so held, and the worth of the occupants.[2] Early in the thirteenth century certain of the abbats of Jedburgh, supported by their chapter, had granted certain of their appropriate churches to priests with a right of succession to their sons. This was condemned in 1221 by Honorius III.; but it is referred to here as showing that the practice

[1] *Lib. Offic. S. Andree*, p. xlix. [2] *R.G.* i. p. 59.

was not repugnant to the general sentiment of the time.[1]

There is reason for believing that popular sentiment was, on the whole, not hostile to these uncanonical connexions of the priests and their 'wives.' The temptations to which unmarried priests were exposed in the exercise of the sacrament of penance, and otherwise, are often referred to in the medieval statutes. The confessional was a source of danger then, as, indeed, it has always proved to be. And it is impossible that such rigorous condemnation of the sins of priests with their female penitents should find a place in the ecclesiastical statute-books without a cause.[2]

Returning for a moment to the Scottish statute of the thirteenth century, which enjoined penalties against the clergy who 'publicly' kept concubines, it is perhaps right to observe that the qualification implied in the word 'publicly' is in no sense peculiarly Scottish. In fact it is drawn from the decretal letter of Pope Alexander III., which had been cited at the Council of Westminster in 1175, where we read, 'If any priest or clerk in holy orders (*i.e.* any priest, deacon, or subdeacon) who is in possession of a church or ecclesiastical benefice, shall *publicly* have a *fornicaria*,' etc.[3] Again, at the Council of Oxford in 1222, it was enacted that 'no beneficed clerks, nor those in holy orders, shall presume to keep concubines *publicly* in their houses, or elsewhere, when they have *public* access to them.'[4] We have already referred to the constitutions of Otho at the Council of London in 1237. And to these instances where the emphasis seems to be laid on the iniquity of publicity in his doings on the part of the priest, we have to add an extract from the constitutions of Walter de Cantilupe, Bishop of Worcester, in 1240. 'We command the archdeacons and our officials to make diligent inquiry whether any of them (*i.e.* beneficed clerks) are married, or *publicly* keep concubines in their houses or elsewhere.[5]

[1] Theiner's *Monumenta, etc.* No. 44.

[2] See *S.E.S.* ii. pp. 28, 48.

[3] *W.C.* i. 476.

[4] *Ibid.* i. 607.

[5] *Ibid.* i. 672.

The fact is, there seems to have been a good deal of discreet blindness to anything but what was glaringly and outrageously scandalous. The very large number of dispensations bestowed on the sons of priests for the purpose of being ordained and holding a benefice points to an unwillingness to deal hardly with what the clergy seem to have regarded as no more than a technical offence in disobedience to an ecclesiastical ordinance. Nothing but an exemplification of the facts in some detail could convey a conception of the state of things. But I can here do no more than exhibit a few of the numerous testimonies to the existence of the general indifference of the clergy to the canonical injunctions as to chastity.

In the space of one year (1342) Pope Clement VI., besides many dispensations for the ordination of the bastard sons of laymen, granted dispensations that certain sons of priests, each of whom is named, may be ordained and hold one benefice each. The dispensations are addressed to the bishops of the following dioceses, after the name of each of which I have placed the number of dispensations granted. Canterbury, 1; Bath, 1; St. Andrews, 1; Chichester, 1; Norwich, 1; Exeter, 7; Lichfield, 10; Worcester, 5; Lincoln, 7; Hereford, 5; Winchester, 2; York, 6; St. David's, 3; Salisbury, 2.[1] It would be quite a mistake to suppose that the dioceses not here named were more marked by adherence to Church discipline than those in which dispensations were granted. It is more likely that they simply were not at this time so exigent in their demands. Less than two years later the bishop of the small diocese of Dunkeld obtains a faculty to ordain six sons of deacons and six sons of priests.[2] In 1344, on the petition of the Queen of Scotland, the Pope dispenses Thomas de Kinnemund (already dispensed for illegitimacy) to hold the canonry and prebend of Balhelwy in Aberdeen, his father having held a canonry and prebend in the same cathedral.[3] In 1306 the deanery of Dunkeld was, by dispensation, held by the son of a subdeacon.[4] In 1329

[1] *Calendar of Papal Registers* (Papal Letters), iii. pp. 65-7, 90-2.

[2] *Ibid.* 169. [3] *Ibid.* 149.

[4] *Cal. Pap. Reg.* (Letters), ii. p. 10.

Donald of Kingussie, son of a priest, receives a dispensation to be ordained and hold a benefice.[1] In 1338 the Pope dispenses another son of a priest to be ordained and hold a benefice in the diocese of Moray.[2]

In 1279 Pope Nicholas III. wishes the Dean of Caithness, who had been elected to the bishopric, to renounce any right he may have acquired, as he is said to be paralysed, and to have an illegitimate son 30 years of age and another whose age is not specified. If he refuses to resign, he must appear at Rome and be examined *super literaturam* and as to his bodily infirmities.

In 1381 Alexander, Bishop of Caithness, petitions the Pope, Clement VII. (after the end of the schism reckoned an anti-Pope), for license for fifty persons of illegitimate birth to be ordained and hold a benefice apiece. The largeness of this demand for the sparsely populated diocese of Caithness seems to have staggered the Pope, for the answer was, 'Granted for twenty-five of this city or diocese.'[3] The petition, indeed, does not state that the dispensation was intended for the sons of the clergy. But its general terms (if they are correctly stated in the Calendar of Petitions) would probably be taken to include such. In 1371 Glen, the son of a priest, in the diocese of Glasgow, is granted a dispensation to hold a second benefice.[4] In 1402 we find the son of a priest holding a benefice in the diocese of St. Andrews, and praying for a dispensation to hold two more.[5] In 1406 we find another son of a priest in priests' orders.[6]

It would be easy to multiply examples of the frequency of sons of priests and other clerks, but, perhaps, when we add the instances already exhibited of bishops who had to be postulated as the sons of clerks, it may be taken as a sufficient indication of the facts.

Faculties for dispensing sons of the clergy to be ordained and hold benefices were bestowed by the Popes with a lavish hand on their legates and nuncios to England. In 1372 Gregory XI. granted a faculty to William de Carpentras, nuncio on a mission to France and England,

[1] *Ibid.* 302. [2] *Ibid.* 544. [3] *C.P.R.* (Petitions), i. 565.
[4] *C.P.R.* iv. 166. [5] *Ibid.* (Petitions), i. 618. [6] *Ibid.* 622.

to dispense fifty persons of illegitimate birth, even the sons of priests and those born in adultery, to be ordained and hold a benefice apiece, with cure of souls.[1] In 1380 the anti-Pope, Clement VII., was even more profuse. Guy, cardinal priest of St. Cross in Jerusalem, had been appointed nuncio to England, Scotland, Ireland, and Flanders. He is granted a faculty to dispense two hundred persons on account of illegitimacy, whether sons of priests or not, to hold one, two, or three benefices.[2] These examples, to which others could be added, go to illustrate the subject of this chapter.

[1] *Cal. Pap. Reg.* iv. 171. [2] *Ibid.* 242.

CHAPTER XX

PAPAL TAXES, AND PAYMENTS MADE TO THE ROMAN COURT

The relation of the papal exchequer to the national churches of Europe exhibits general features common to all countries; and this chapter can do little more than furnish illustrations from Scottish sources of the ordinary methods of papal finance.

At various times throughout the middle ages loud complaints were made in various countries of Europe against the exactions of the Roman court. The history of medieval England furnishes many examples of expostulation against papal rapacity. Scotland was more submissive; and our records supply us with nothing like vehement protest till we reach the fifteenth century. The earlier development of parliamentary institutions in the southern kingdom may perhaps in part account for the difference. But however we may explain the fact, Scotland was without doubt a much more patient and docile daughter of the papacy.

1. *Peter's Pence.*—The earliest form of impost, in value comparatively small, was what was commonly known as Peter's pence, and in England as Peter's pence, Peter's silver, and, in early days, Romescot. This was originally a yearly tax of one penny (the silver *denarius*) from every house. It is a fact of interest that the very first notice of Scotland recorded in the *Calendar of Papal Registers* is about money. It appears from this notice that the Earl of Caithness and Orkney had granted a payment to the Pope of a penny from every house in his lordship, and

that the tax had in fact been paid in the time of Andrew, Bishop of Caithness, who died in 1184. But Andrew's successor, Bishop John, for reasons not assigned, attempted to prevent the continuance of the payment. In 1198 Pope Innocent III. sent a mandate to the Bishops of Orkney and Ross to deal with their brother, and enjoin his submission.[1] More than a hundred years later we find what looks like a disposition on the part of the Bishop of Orkney, then a suffragan of Trondhjem, to resist the tax. William, Bishop of Orkney, had cast into prison and despoiled a papal collector, and had appropriated 100 marks of Peter's pence. By mandate of the Pope (1326) he is ordered to make restitution, under pain of being summoned to Rome for disobedience.[2] But these acts belong to a remote region, where even the prelates appear to have been affected by the general spirit of lawlessness.

There are many notices of the appointment of agents, frequently foreigners, commissioned to collect Peter's pence in Scotland. The office was generally combined with the collectorship of tenths and other cess for the Roman *curia*, of which we shall have to say something presently.

There were difficulties in collecting this and other money for objects outside Scotland, and when collected there sometimes seems to have been a reluctance to part with it. Thus, about 1261 money had been collected for the relief of the Holy Land by the efforts of one of the Preaching Friars of Ayr. The sum was deposited with the Prior and Chapter of Whitherne with a view to its transmission to the proper quarter. But the canons declined to give it up; and when the commissioned agent of the Pope, Leonardo, Precentor of Messina, papal chaplain and nuncio, sent a messenger to Whitherne to receive payment, the canons, after having beaten him, turned him away empty.[3] But violent action of this kind was highly exceptional.

In 1213 Innocent III. complained that the bishops of England paid him only 300 marks a year for Peter's

[1] *Cal. Pap. Reg.* i. 1. [2] *Cal. Pap. Reg.* ii. 484.

[3] *Cal. Pap. Reg.* i. 384, 385, 423.

pence, while they retained 1000 marks for themselves. Still, for a long time the Pope contented himself with the traditional composition for Peter's pence, namely, £201 9s., till in 1306 Clement V. demanded the true payment of a penny from every house. This demand appears to have been successfully resisted. Our Scottish records do not, I think, afford any light as to whether any composition was made with Scotland for the revenue arising from Peter's pence. In 1329 we find that the papal nuncios, Bertrand Cariti and Raymund de Quercu, were granted a faculty by the Pope to exact Peter's pence from all persons in Scotland, ecclesiastics and seculars, and from monks, exempt and non-exempt.[1] In 1335 another nuncio and collector of Peter's pence is commissioned to Scotland.[2]

I have not been so fortunate as to light on any statement of the sum to which Peter's pence from Scotland amounted in any one year.

2. *Tenths.*—There are occasional examples of the Pope demanding from the clergy of Scotland a certain proportion of their incomes for a specified number of years, to be applied to some specially urgent object, such as the relief of the Holy Land, or the defence and relief of the dominion of the Pope himself. As early as 1247 Pope Innocent IV. commanded the Bishop of Dunblane to collect the *twentieth* of all ecclesiastical revenues in Scotland for aiding the Crusades.[3] It was for the same purpose that the demand was made which resulted in the famous new valuation of ecclesiastical property in 1275 by the papal commissioner, Boiamund de Vicci. This official was directed not to accept the old valuation of the property of the Church, which was admitted to be, in 1275, below the actual value. He was empowered to exact an oath from the clergy to state the *verus valor* of their several benefices; and upon this statement he was to proceed in exacting a *tenth* for the space of *six years*. This was indeed a heavy burden. But the payment seems to have been made, on the whole, with extraordinary punctuality during the two years for which the statement of Boiamund's accounts have been preserved in the records

[1] *Cal. Pap. Reg.* ii. 490. [2] *Ibid.* 559. [3] *Cal. Pap. Reg.* i. 237.

of the Vatican.[1] But at the expiry of the five years we find that there were some defaulters; for in April, 1282, Boiamund receives a mandate from Rome to warn those prelates and clerks who had incurred excommunication by non-payment to pay within a given time, and to make satisfaction for the delay, or else, in case of non-compliance with this order, to summon them to appear at Rome within three months.[2] Nor was this the end of the affair. Boiamund himself is accused of failing to despatch the money collected to Rome, by reason, as he alleged, of the king's prohibition.[3] After this date a *tenth* is the favourite proportion in papal demands.

It may be added that the clergy who were taxed had also to contribute to the expenses of the collection, having to supply 'procurations,' or a money payment in lieu of entertainment, to the papal collector.

There is a notice of an Italian collector of tenths from Scotland in 1316.[4] John XXII. included Scotland in his demand for tenths for the necessities of the Roman *camera*. In August, 1331, Scotland paid for tenths and fruits of void benefices 1012½ marks (£675) to the Italian collectors; and before May in the following year an additional 1000 marks (£666 13s. 4d.). Unfortunately the amount from tenths is not given separately.[5] Translated into the corresponding value of our present currency, according to even the lowest computation, these sums represent a very large amount of money to be sent from a poor country.[6]

In 1372 Gregory XI., the last Pope of 'the Babylonish Captivity,' sent a mandate to each of the bishops of Scotland to levy and exact, each in his diocese, except from

[1] See Theiner's *Monumenta*, No. 264. One is likely to be misled by the heading of the document, which speaks of it as the accounts for three years, while in reality, when the details are examined, the tenths for only two years are recorded.

[2] *Cal. Pap. Reg.* i. 465.

[3] *Ibid.* 469, 478.

[4] *Cal. Pap. Reg.* ii. 126.

[5] *Ibid.* 505.

[6] Dr. Cutts estimates the purchasing power of money in the thirteenth century as twenty-four times as great as now. This is perhaps an overestimate (*Parish Priests*, 387).

benefices held or to be held by cardinals, a tenth for one year of all church revenues, to aid in the recovery and preservation of the lands of the Roman Church.[1] Gregory's expenses in the payment of his irregular troops were heavy at this time.

The reference to the exemption of Scottish benefices held by Roman cardinals was not a mere surplusage of official language. In 1376 John, Cardinal Bishop of Tusculum, was provided to a canonry, prebend, and archdeaconry of Glasgow; and he held at the same time the archdeaconry of Ross.[2]

3. *First Fruits: Annates.*—Our few Scottish chroniclers do not give us any substantial aid on the subject of these imposts. But from other sources we learn that the Pope used to regard the first fruits (*primitiae*) of vacant benefices, in Scotland as well as in England, as being at his disposal. Thus, in 1259 Pope Alexander IV. granted the indult to Robert, Bishop of Dunblane, to convert to the payment of the debts of the see the first fruits, during three years, of all the benefices and dignities falling vacant in the diocese.[3] This kind consideration for Robert de Prebenda may perhaps be accounted for by a passage in the *Chronicle of Melrose*, which leads one to suspect that, on his promotion the year before, Robert managed to satisfy the demands of the Pope and cardinals for money.[4]

John XXII. was no sooner on the papal throne than he appointed a collector of first fruits, whose commission extended to Scotland as well as England.[5] In 1332 the

[1] *Cal. Pap. Reg.* iv. 101, 150.

[2] *C.P.R.* iv. 255, 256. It was probably the comparatively small value of Scottish benefices that saved Scotland from other appointments of a similar kind. In England during the second half of the fourteenth century one cardinal held the treasurership of Wells and precentorship of Chichester; another, the archdeaconry of Exeter; another, the archdeaconry of York and the archdeaconry of Leicester; another, the provostry of St. John's, Beverley; another, the archdeaconry of Berkshire; another, the archdeaconry of Canterbury; another, the archdeaconry of Northampton; another, the archdeaconry of the East Riding; another, the deanery of Salisbury; and several other examples could be added.

[3] *Cal. Pap. Reg.* i. 367.

[4] *Sub anno* 1259.

[5] *Cal. Pap. Reg.* ii. 127.

collectors in Scotland, Bertrand Cariti and another, transmitted to John XXII. at Avignon the sum of 1006 marks and 40 pence (£670 16s. 8d.), the fruits of void benefices in Scotland.[1] In 1381 Clement VII., the anti-Pope, rewarded Scotland, which was faithful to his cause, by granting towards the rebuilding of the cathedral of St. Andrews, which had been destroyed by fire, one year's fruits of all benefices which fell vacant in the diocese during the space of ten years.[2]

We have already seen (p. 283) how Scottish bishops were sometimes much embarrassed by the heavy expenses incurred at the Apostolic see on account of their promotion. We have good reason to believe that much money changed hands at Rome, or Avignon, of which no record remains in the ledgers of the papal *camera*. But even the regular official charges amounted to large sums.

In 1259 John de Chyam was appointed to the bishopric of Glasgow. He had promised to pay to the Pope 800 marks (£533 6s. 8d.), an enormous sum in those days, at the lowest computation over £6000 of our money. Of this he had paid 600 marks (£400) by October, 1261; but he had to be pressed for the balance, said to be for the cardinals. He is then warned that excommunication would follow if payment was not made; and, as there was still delay, he is, in the following February, given fifteen days to pay up or suffer public excommunication.[3] There was a great reduction in the papal charges by the fifteenth century, if the sum stated above is really to be taken as payments due for promotion.

The respective revenues of the Scottish bishoprics, based, it would seem, on an old valuation, were recorded at Rome; and the ecclesiastic succeeding to a bishopric had either to pay at once, or to oblige himself by an oath to pay, within a short specified period, a large proportion of one year's revenue. If he failed to implement his obligation he incurred the penalties of suspension, excommunication, and interdict. From the account-books of the Roman *camera* of the fifteenth and sixteenth centuries we learn the amounts paid for each Scottish bishopric. There are occasional slight variations in the records from

[1] *Cal. Pap. Reg.* ii. 507. [2] *Ibid.* iv. 244. [3] *Ibid.* i. 380, 384.

time to time; but the following table compiled with some care from the pages of Dr. Brady's work on *The Episcopal Succession* (vol. i. Rome, 1876), and Eubel's *Hierarchia Catholica* (vol. ii. Monasterii, 1902) will be found, it is believed, tolerably correct. I have added, when feasible, the value of the revenue (*redditus*) of the see, as stated at Rome. The payments recorded were known as the bishop's *commune servitium*, which was divided equally between the Pope and the college of cardinals.

Table of the Tax, known as Commune Servitium, *paid to the Roman Camera from the Revenues of each See in Scotland in the fifteenth and sixteenth centuries on the appointment of a Bishop.*

St. Andrews	3300	gold florins.
Glasgow	2000 or 2500	„ „
Dunkeld	450	„ „
Dunblane	800	„ „
Aberdeen	1250	„ „
Brechin	500	„ „
Moray	1200	„ „
Ross	600	„ „
Caithness	600 (?)	„
Galloway	100	„ „
Argyll	110, once 200	„ „
The Isles	660, once 600	„ „
Orkney	200	„ „[1]

Beside the *commune servitium*, recorded in the above table, which went to the Pope and the cardinals, five smaller payments had to be made, which were bestowed on various officials of the Roman court. These are known as 'small

[1] In the table given above, when alternative figures are recorded, it means that on different occasions the different figures are entered as the *taxa*. The records have to be read with care, and there are here and there manifest errors in the originals, or in Dr. Brady's transcript. Some startling figures require further investigation. But with regard to the majority of the sees the table may be relied on. The *revenues* of the sees are unfortunately recorded in only a few cases, and these are doubtless based on an old valuation. St. Andrews is placed at 10,000 gold florins; Dunkeld at 3000; Aberdeen at 3000; Moray once at 2000, once at 1500; Ross at 2000, and on another occasion at only 1000. The small proportion between the *taxa* and the *redditus* of Dunkeld is suggestive of an error. Eubel (ii. 136) gives 750 florins for Caithness. It will be remembered that the small revenues of Galloway were supplemented by the annexation of the abbacy of Tungland.

services,' or *minuta servitia*. Thus John Laing, Bishop of Glasgow, on his promotion in 1473, beside paying his *commune servitium* of (apparently) 2500 florins, paid for one *minutum servitium* 89 gold florins 9 shillings and 3 pence, and for three other *minuta servitia*, 67 gold florins 4 shillings and 9 pence. The monasteries of Scotland were taxed at Rome in a similar way to the bishoprics. Dr. Brady's work, already referred to, supplies, though in an imperfect and confused manner, the *taxae* of many of the monasteries during the fifteenth and sixteenth centuries. To investigate and attempt to explain the variations and inconsistencies that mark Dr. Brady's extracts from the papal records would be extremely difficult, and for our present purpose not very advantageous. It is enough to say that everyone provided to the headship of any of the greater, and, at least, many of the lesser houses, whether in regular form or merely as holding the *commendam*, was compelled to pay at Rome sums bearing a certain, not quite clearly ascertained, proportion to the revenues of the monastery. Thus, for Arbroath 600 gold florins were paid; for Paisley, in one case 600, in another 1333; for Melrose, 1980; for Cambuskenneth, 400; for Balmerino, 200; for Inchaffray and Culross, 100 each; for Lindores, 333. Even Iona had its 20 florins to pay. From what has been said it will be perceived that considerable sums were from time to time despatched to Rome. And the particulars recorded above refer only to the *commune servitium*. The 'smaller services' had also to be duly paid.[1]

As has been already hinted, much money which was never entered in the account-books of the Pope or the cardinals made its way from Scotland to Rome, and was expended in bribes for the securing of coveted benefices. Things must have come to a sorry pass when the Parliament of 1427 made the enactment that no clerk, whether

[1] The records in Dr. Brady's *Episcopal Succession*, vol. i., give rise to many questions. Why, for example, does the wealthy house of Holyrood pay but 250 florins, and in one case only 171½ florins? The revenue of Holyrood at the dissolution was in money, without counting wheat, oats, bear, etc., £2926. Two or three other perplexing questions are presented, but they cannot be considered here.

religious or secular, should pass from the realm until he appeared before his ordinary and then before the chancellor of Scotland 'to show to them good and honest cause of his passage, and make faith to them that he do no baratry.' The act was to apply also to barators who were already abroad, of whatever degree, to whom the lieges were forbidden to give help or favour.[1] The Act of the Parliament of James III. in 1483 complains of the great skaith and damage the realm daily sustains from prelates and clerks taking money out of the realm for promotions and pleas at the court of Rome; but in this case the objection seems to be based less on the ecclesiastical impropriety of the purchasing of promotion than on the rooted dislike to coin leaving the kingdom. If the clerk's 'finance' is made in merchandise of the realm, and if he establishes this fact to the satisfaction of the auditor of the king's exchequer, he was not to be interfered with.[2] The same idea underlies the Act of 1496,[3] and the Act of James V.'s Parliament in 1540.[4]

Every Scottish ecclesiastic who desired advancement would be wise to have his paid agent at the Roman court. The interest of cardinals and of high officials had to be secured, and it would be only prudent to supply ample funds for the purpose.

In June, 1488, John Balfour, Bishop of Brechin, was approaching his end. William Meldrum, vicar of Brechin, looked with longing eyes to the preferment which would obviously soon become vacant. No time was to be lost, and not waiting for the decease of his bishop, he conveys by his intermediary, Walter Moneypenny, Prior of St. Serf's Inch in Loch Leven, 200 lib. of Flemish grossi, to Gaspar Bonciani, Florentine merchant, for the procurement of the expedition of his bulls appointing him to the see of Brechin on the death or resignation of Balfour, and for certain other payments only obscurely hinted at. The relative deeds, loaded with legal safeguards, are printed in

[1] *Act. Parl.* ii. 16. The word 'barator' or 'barrator' is explained by Skene, in his *De significatione verborum*, as one who obtains a benefice by simony, or who corrupts a judge by bribes.

[2] *Act. Parl.* ii. 166. [3] *Act. Parl.* ii. 237. [4] *Ibid.* 375.

the appendix to the *Registrum Episcopatus Brechinensis*.[1] Bonciani was only a bank-agent, and he received eight *per cent.* for forwarding the money to the papal bankers, Philip Strozzi & Co. Meldrum's forethought was rewarded: Balfour resigned, and Meldrum was appointed to Brechin in January, 1489.

The bulls of the child-archbishop, Alexander Stewart, were paid for by his father, James IV.; and numerous payments in connexion with the bulls are entered in the *Accounts of the Lord Treasurer*. On 22nd Feb., 1503-4, the treasurer delivered to the Dean of Moray and Sir Thomas Hakirstoun, 'to the finance of the bullis of Sanctandrois,' 1110 gold angels, and two gold chains, doubtless intended as 'propines' to some important persons. The value of the 1110 angels is set down as 1285 lib. (Scots). And allowances are made for the expenses of these agents in passing through England. When in the September of the same year messengers were despatched to bring the bulls home to Scotland it is noted that there was still owing to the foreign banker, Jerome Friscobald, the sum of 1365 lib. Flemish. Of this 1165 lib. 16s. 8d. (represented in Scots money by 3082 lib. 16s.) was paid in one sum, and the balance, apparently, in smaller sums.[2] Those who are expert at figures and the relative values of the various coins in which payment is made would probably be able to work out in its *minutiae* the finance of the bulls. It is sufficient for our purpose to show in a general way that a very considerable sum had to be transferred to Rome.

The value in exchange of the gold florin of the *camera* towards the close of the fourteenth century was two shillings and eightpence or two shillings and ninepence. I have not lighted on evidence as to its exchange value in the fifteenth and sixteenth centuries. Assuming it to be about the same, though it is possible that it may have changed somewhat, we find that the 3300 florins (the *taxa* for St. Andrews) at, say, two and eightpence sterling, give us 400 lib. sterling or about 1466 lib. Scots, in the early

[1] Nos. lxii.-lxiv.

[2] *Accounts of the Lord High Treasurer*, ii. 243, 244

part of the sixteenth century. But a much larger sum, as has been seen, was spent on 'the finance of the bulls' than what was needed for the *commune servitium* in the case of the young archbishop.[1]

Enough has been said to make it easily understood how a poor man might be seriously involved in debt on accepting a bishopric. Through the happy accident that one of the bishops of Moray was of sufficiently business-like habits to keep his acknowledgments for payments made by him, we are presented with a picture of the troubles brought upon a Scottish bishop of the fourteenth century, by the heavy charges of the Roman court on his promotion. Alexander Bur, Archdeacon of Moray, was advanced to the bishopric in 1362. Two years later his fees were not all paid. He had incurred excommunication and the guilt of perjury for not having fulfilled his promissory oath of paying within the prescribed time. But on his making a part payment of his *commune servitium*, to the amount of 553 gold florins 21 shillings and 8 pence, and also a part payment for four *minuta servitia* to the amount of 109 florins 8 shillings and 6 pence, he was given another year to discharge the rest of the debt, and the excommunication was removed.[2]

The unfortunate Patrick Graham, Bishop, and afterwards Archbishop of St. Andrews (1465-1478), had not completed his payments at Rome for his bulls when his troubles fell upon him. His enemies in Scotland set the Roman officials to press him for the debts due to them; and failing to make satisfaction through circumstances for which he was not wholly responsible, he fell under ecclesi-

[1] There is reason to believe that it is not quite superfluous for the general reader to know that the appointment of a child to an ecclesiastical benefice such as a bishopric did not involve his consecration. Archbishop Alexander Stewart's uncle, Archbishop James Stewart, was appointed when he was eighteen, but his consecration was not to be till 'the lawful age.' He died unconsecrated six years later. James IV. suggested to the Pope the appointment and consecration of a certain Dominican friar advanced in years to serve as assistant to his son, the young archbishop (*Epist. Reg. Scot.* i. 4).

[2] *Reg. Morav.* 161-164. The term annates (*annatae*) is sometimes applied to this tax. See Ferraris, *s.v.*

astical interdict. The unhappy man's mind gave way under his accumulated troubles.[1]

Dispensations, Indulgences, etc.—The story common to the rest of western Christendom in regard to papal indulgences and dispensations may be repeated in respect to Scotland, and there is nothing peculiar or characteristic which claims special notice. Indeed, except at the celebration of the jubilees, the revenues reaching Rome from these sources were probably never very great. That the power and influence of the papacy was enormously increased by these means need not be questioned. And the numerous officials and the army of clerks engaged in the work of the Roman court, doubtless, had their pickings. They did work, and it was only right that they should be paid for it; and when a favour was sought, few would be unwilling to pay on a somewhat liberal scale. But from this source little aid was to be found towards the general finance of the papal establishment.

We have dealt already with dispensations for (1) defect of birth and (2) defect of age, both with reference to obtaining holy orders and holding benefices. Something also has been said of (3) dispensations for holding more than one benefice, which resulted in the discreditable frequency of pluralists on a large scale. Notice has also been taken of (4) dispensations for marriages within the forbidden degrees of consanguinity and affinity. It may be permitted to give a few specimens of a dispensation, license, or indult, as it was sometimes styled, of another kind.

The rule of the Church was that sacramental confession was to be made to the parish priest; but many persons much preferred choosing their own confessor. The permission to do this could only be obtained from the Pope. In the fourteenth century more particularly, (5) license to choose a confessor, who should have power to give plenary remission at the hour of death, was much sought for as well in Scotland as in England. Many ecclesiastics,—bishops, abbats, priors, deans, canons, and a few of the

[1] See Buchanan, *Historia*, lib. xii. cc. 33-35. Buchanan is fuller in his treatment of the story of Graham than Lesley or Ferrerius. One wonders where he got his information.

clergy of lower rank,—are found as applying for this privilege, and obtaining it.[1] Naturally, where money had to be expended, the rich and the noble appear much more commonly in the records than persons of whom we know nothing. Within a few years we find this indult granted to King David II. and Queen Joan, Margaret and Matilda, the king's sisters, William Ramsay, knight, and his spouse, the Earl (Thomas Stewart) and the Countess of Angus, William Douglas, Knight of Liddesdale, William, Earl of Douglas, and Margaret his wife, and occasionally to young Scottish ladies and gentlemen who were entitled to style themselves 'damsels' and 'donsels,' —the daughters and sons of distinguished families. This privilege was a privilege of the well-to-do.

We may pass over, as of too little importance for detailed consideration, various minor indults and dispensations which present themselves from time to time in record, such as those arising out of the Pope's claim to be able to dispense the obligation to compliance with ecclesiastical law, to communicate vows, and to relax the obligation of oaths. Vows to take part in the crusades, vows to go on pilgrimage, vows to abstain from flesh-meat, and such like, when their fulfilment became troublesome, might on due application to the Pope be commuted for some compensation, generally in the shape of money expended upon deeds of charity. Other indults from Rome, such as the privilege of having a portable altar (*altare portabile*),[2] and of having mass celebrated before daylight, which were sought by great people, lay and ecclesiastical, need only be mentioned. But all such privileges involved recourse to the Pope, and all involved cost.

The rule of the Church forbade servile labour on Sundays

[1] The subject of ecclesiastical jurisdiction in the remission of sins, as understood in the fourteenth century, and the meaning of 'plenary remission' would involve an inquiry which would exceed our limits.

[2] In the only indult of this kind which I have been so fortunate as to see,—granted 17th May, 1483, to William Hay, Earl of Errol, and Elizabeth his wife,—the parties are allowed to have a portable altar upon which mass and other divine offices may be celebrated by their own or another fit priest 'sine juris alieni prejudicio.' The last clause may refer to the parish priest's right to oblations.

and festivals. The canon law allowed herring-fishing on Sundays and all but the greater festivals, on condition that a fitting portion (*congrua portio*) of the catch should be given to the Church and the poor. But did this apply to salmon-fishing? This was a question upon which the faithful in the diocese of Aberdeen were particularly interested. Accordingly, application was made to Rome; and in 1451, Pope Nicholas V. granted an indult for salmon-fishing on Sundays and festivals during the five months when salmon were most plentiful, on condition that the first salmon should be given to one of the neighbouring churches.[1] The same Pope, in 1450, at the request of Bishop Kennedy, granted an indult to the people of the diocese of St. Andrews to use butter and milk-foods (*lacticinia*) in Lent and on fasting days when flesh-meat was forbidden, as olive oil was difficult to procure and was costly.[2] These are small matters, but they illustrate how the influence of the papacy among the people could be increased and fortified. It was long before they ventured to think that the matter of butter and cheese might be settled within the realm of Scotland.

Confirmations of Ecclesiastical Property.—Another reason for frequent recourse to Rome was the desire, so constantly exhibited in the middle ages, for accumulated confirmations of the rights of property. Secular superiors are found frequently, as every old charter-chest shows, granting confirmations of the grants of predecessors. And as each new Pope succeeded to the throne he was besieged by applications from the monasteries and other ecclesiastical corporations to grant a confirmation of their property, rights, and privileges. Of the many bulls and briefs addressed to Scotland, a very large proportion consists of confirmations. Again, sometimes we find the papal confirmation of the appropriation of a parish to a monastery or a cathedral, or of the erection of a canonry. Even such a privilege as a right-of-way through his property granted by a secular lord to ecclesiastics, it was thought necessary, or desirable, to have confirmed by a writ from the Bishop

[1] *Reg. Ep. Aberdon.* i. 256.

[2] The Bull is printed in *Regist. Priorat. S. Andree*, 24, 25.

of Rome.[1] But the papal appointments to benefices in Scotland, even to many of petty value, gave an influence to the Pope in the lives of Scottish ecclesiastics which must have been very great. Preferment of all kinds was to be had by those who either directly or indirectly could succeed in finding favour at Rome.

[1] See the confirmation by Pope Lucius III. (*Lib. de Melros*, 13).

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